



CITY COUNCIL STAFF REPORT
MEETING DATE: July 2, 2003

Agenda Item # 1

Submitted By:

BAHS Director

Approved By:

City Manager

AUTO DEALER STRATEGY WORKSHOP

RECOMMENDED ACTIONS: Conduct the workshop and direct staff to make modifications as approved

EXECUTIVE SUMMARY: In February 2002, the City Council adopted an "Auto Dealer Strategy" (Strategy) and directed staff to implement the Strategy. In June 2003, the Council directed staff to amend the Strategy to delete reference to the annexation of property and to schedule a workshop to discuss the Strategy more in-depth.

Attached for your reference are the following:

- 1) Revised Auto Dealer Strategy,
- 2) Chronology of Council Consideration of the Auto District Strategy,
- 3) A copy of the staff report from February 2002 which includes an area map and list of suitable sites and the entitlements required for each site,
- 4) An article from the San Jose Business Journal dated May 2002, and
- 5) A copy of a memo to the City Manager discussing the next steps of the Strategy.

It should also be noted that the Strategy was adopted as a component of the overall Economic Development Strategy.

The Strategy focuses on three major issues: 1) the prioritization of areas we would like to see dealerships locate in, 2) the marketing strategy, and 3) the incentives for dealerships. At this workshop, we are recommending that the Council consider the following questions regarding the Strategy:

- Where should auto dealerships be located?
 - The Dunne Ave/Hwy 101 area is identified as the area best suited for dealerships.
- In light of recent decisions, should additional locations be added to or eliminated from the three areas (A, B & C) on the map?
 - Specifically, Condit Rd between Dunne and Tennant Avenues or the vacant properties south of K-Mart are not included as potential locations for dealerships in Area A.
 - Staff is working with the property owners in the Walnut Grove PUD to pursue automotive uses.
- How many dealers does the City want to see in town?
- Should we revise the method by which we assist dealers? How do we want to define auto dealer?
 - Does the current approach need to be modified?
- Should the Strategy address any design/architectural issues?
 - The Strategy is silent on the issue as the PUD for the various locations would address design on a case-by-case basis.
 - Should the Strategy address issues inherent to dealerships such as test drives, noise, and lighting.
- How can/should auto dealerships fit into the image of Morgan Hill?

Under a separate cover, staff will provide the Council additional information related to the above questions.

FISCAL IMPACT: None at this time



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

APPROVAL OF MAIN AVENUE / UPRR CROSSING AGREEMENT

RECOMMENDED ACTION(S):

Approve the attached Main Ave. / UPRR Crossing Agreement, subject to the approval of the City Attorney

EXECUTIVE SUMMARY:

Approximately 2 years ago the City applied for and was awarded a Federal grant to pay for safety improvements to the Main Avenue crossing of the UPRR tracks. Previous Council action awarded the design of the Main Ave/UPRR Safety Improvement Project to the consulting civil engineering firm of Rajappan & Meyer (Consultant). The design of this project has been underway since early 2001.

The original project was to improve only the existing pavement crossing width of approximately 40 feet. The estimated cost was to be covered by the grants totaling \$326,000, including \$38,000 for the design. The crossing now proposed, based upon requirement of the Public Utilities Commission, will be approximately 60 feet wide, curb to curb, and include sidewalks and bike lanes. The public bid construction cost projection at this time is approximately \$301,000. The fees and costs charged by UPRR for installation of at-grade panels, revised signals, UP flagmen, and additional right-of way are estimated to total \$227,500. The total cost estimate is, therefor, \$625,000 which would be offset by the grants of \$326,000 for a total City commitment of \$299,000. It should be noted that this plan includes approximately \$52,000 in water system improvements, and \$51,000 in storm drain improvements.. It is also notable that almost \$94,000 of the total, above, has already been spent for design, as previously approved by Council. Staff anticipates the need to supplement funding for this project with approximately \$200,000 from unappropriated Traffic Impact Fee fund balance, but will make the necessary funding recommendation when we are ready to award the construction bid.

In order to keep the grant viable the project must be bid and the construction contract awarded in the next two months.

At this time Staff recommends approval of the Crossing Agreement with UPRR, subject to the review and approval by the City Attorney.

FISCAL IMPACT:

The agreement commits the City to paying to UPRR a total of \$92,802.00 for signal relocation and right-of-way purchase. Sufficient funds exist in the current year CIP budget, Project No. 504D00.

Agenda Item # 2

Prepared By:

Contract Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

APPROVAL OF SAN PEDRO PONDS JOINT USE

AGREEMENT

RECOMMENDED ACTION(S): Approve Joint Use Agreement with Santa Clara Valley Water District for San Pedro Ponds Trail Project, subject to review and approval of City Attorney.

EXECUTIVE SUMMARY: The need to create trails and linear parks in the City was a recommendation of the City's Parks and Recreation Programming Master Plan completed in January of 2001. The Master Plan identified the San Pedro Percolation Ponds property owned by the Santa Clara Valley Water District as a potential site for a joint-use pedestrian and bicycle trail.

Based upon the recommendation of the Parks and Recreation Programming Master Plan, the San Pedro Ponds Trail Project was established as a Capital Improvement Project in FY 2001-02 with a funding allocation of \$65,000 identifying State Department of Recreation Per Capital Grant Funding as a funding source.

The project proposes to install a 3' high fence at the edges of the maintenance service roads that exist within the property to create a contained pathway for the public to access the park to observe the wildlife and enjoy the surroundings. A public access gate will be installed on Hill Road. A sign will be erected on Hill Road acknowledging the "San Pedro Ponds Joint-Use Trail", a cooperative recreation project of the SCVWD and City of Morgan Hill. The City proposes to maintain and operate the trail.

A Biological Assessment was completed in November of 2002 upon which an Environmental Negative Declaration was filed with Santa Clara County in December of 2002. In January of 2003 the 30-day public comment period was completed.

An informal committee consisting of City Council Member Steve Tate, Parks and Recreation Commissioner Rick Page, SCVWD Board Members Sig Sanchez and Rosemary Kamei, City staff member Mori Struve, SCVWD staff member Marc Lucca, and private citizen Jon Hatakeyama have worked together on this project. Mr. Hatakeyama is organizing possible donations to the project for potential future improvements such as seat benches and organizing volunteers for assisting with maintenance.

City staff has prepared plans and specifications and are prepared to solicit construction bids following Council's and the SCVWD Board's approval of the JUA. It is anticipated the project can be completed by early fall.

FISCAL IMPACTS: The current CIP includes sufficient funds using State Prop 12 Grant funding for the project.

Agenda Item # 3

Prepared By:

**Dep Dir
PW/Operations**

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

OAK CREEK PARK TENNIS COURT RESURFACING PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Oak Creek Park Tennis Court Resurfacing Project in the final amount of \$28,130.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Oak Creek Park Tennis Court Resurfacing Project was awarded to Vintage Contractors, Inc., by the City Council at their November 6, 2002 meeting in the amount of \$27,630. The project resulted in the resurfacing and striping of the Tennis Court at Oak Creek Park.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

This project was budgeted in the 2002-03 Lighting and Landscape fund balance within the Oak Creek sub-area of the Lighting and Landscape Maintenance District. The allocated project construction cost including a 10% contingency was \$30,393. The contract was awarded in the amount of \$27,630 and the final contract price is \$28,130.

Agenda Item # 4

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
Oak Creek Park Tennis Court Resurfacing Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 2nd day of July, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Vintage Contractors, Inc., on November 6, 2002, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on May 31, 2003, accepted by the City Council on July 2, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is Nationwide Mutual Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 20__.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 2, 2003

ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR 761 DAKOTA DRIVE - MIKE AND JONNA DUNNE

RECOMMENDED ACTION(S):

1. Adopt the attached resolution accepting the public improvements for 761 Dakota Drive - Mike and Jonna Dunne.
2. Direct the City Clerk to file a Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY: This single lot development is located at the end of Dakota Drive (see attached location map). The development was required to construct frontage improvements along a portion of Dakota Drive as well as a storm drain extension along a portion of Dakota Drive and Lotus Way.

The public improvements have been completed in accordance with the project conditions and as set forth in the plans and specifications approved by the City.

FISCAL IMPACT:

Staff time for this project was paid for by development fees.

Agenda Item # 5

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

RESOLUTION NO. 5688

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL ACCEPTING THE PUBLIC IMPROVEMENTS
FOR 761 DAKOTA DRIVE - MIKE AND JONNA DUNNE.**

WHEREAS, the owners of 761 Dakota Drive entered into an improvement agreement on June 4, 2001; and

WHEREAS, Jim Ashcraft, City Engineer, has certified in writing to the City Council that all of said improvements have been installed according to the City specifications and plans for said development.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AS FOLLOWS:

1. The City Council hereby finds and determines that all public improvements required to be constructed pursuant to the above-mentioned development have been completed in accordance with the plans and specifications for said improvements.
2. This resolution shall constitute an interim acceptance of all said public improvements and the date of its passage shall constitute the starting day for computing the one year maintenance provisions.
3. The City Clerk, following adoption of this resolution, will file with the Recorder of Santa Clara County, California a Notice of Completion of the public improvements.
4. If requested by the developer, the City Clerk hereby is authorized to record a certified copy of this resolution with the Recorder of Santa Clara County, California.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 2nd Day of July, 2003, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🔒 CERTIFICATION 🔒

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5688, adopted by the City Council at a Regular Meeting held on July 2, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION

CITY OF MORGAN HILL

761 DAKOTA DRIVE - MIKE AND JONNA DUNNE

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, signed below, represents the City of Morgan Hill as the owner of the public improvements for the above named development. Said improvements were substantially completed on June 20, 2003, by Mike and Jonna Dunne, the developer of record and accepted by the City Council on July 2, 2003. Said improvements consisted of public streets, utilities and appurtenances.

The name of surety on the contractor's bond for the labor and materials on said project is American Contractors Indemnity Company

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 20__.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

Agenda Item # 6

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1621, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDOT – HORIZON LAND (THE FORD STORE))

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1621, New Series, as amended, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 18, 2003, the City Council Introduced Ordinance No. 1621, New Series, as amended by the Following Roll Call Vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: Chang; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1621, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDIR – HORIZON LAND (THE FORD STORE))

WHEREAS, on October 6, 1999, the City Council adopted Ordinance No. 1444, establishing a planned unit development (PUD) and preliminary plan for the northeast quadrant of E. Dunne Avenue and Highway 101; and,

WHEREAS, the PUD, referred to hereafter as the “Horizon Land PUD,” includes the existing Holiday Inn Express, McDonald’s, Jack in the Box, gas station, and 8.65 acres of undeveloped land; and

WHEREAS, the applicant is requesting amendment of the PUD, and establishment of a precise development plan for the 8.65 acres of undeveloped land, which includes construction of a 30,027-square foot Ford dealership and two commercial building pads; and

WHEREAS, on May 13, 2003, the Planning Commission of the City of Morgan Hill held a duly-noticed public hearing on the Application; and

WHEREAS, on May 13, 2003, after the submission of testimony and exhibits, and due consideration thereof, the Planning Commission, by a unanimous vote, continued the Application to May 27, 2003, due to matters raised and documents presented at the hearing; and

WHEREAS, on May 27, 2003, the hearing on the Application continued at the regular meeting of the Planning Commission, at which time the Planning Commission, by a vote of 5 to 0 (with two members absent), recommended approval of application ZAA-98-16: Condit – Horizon Land (The Ford Store) to the City Council; and

WHEREAS, testimony and exhibits were submitted by Applicant, staff, and others, including the file in this matter, which testimony and exhibits are hereby incorporated into the record of this matter; and

WHEREAS, such testimony and exhibits have been considered by the Planning Commission; and

WHEREAS, on June 4, 2003, the City Council of the City of Morgan Hill held a duly-noticed public hearing on the Application; and

WHEREAS, on June 4, 2003, after the submission of testimony and exhibits, and due consideration thereof, the City Council, by a unanimous vote closed the public hearing, continued the Application to June 18, 2003, due to matters raised and documents presented at the hearing; and

WHEREAS, such testimony and exhibits have been considered by the City Council.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAINS AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan because the precise development plan, with its automobile dealership designation, is an allowable use under those documents.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code, as set forth more specifically below and incorporated herein.
- SECTION 3.** An environmental initial study has been prepared for this application and is complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed. An Environmental Impact Report is not required for the proposed Application, as all potential impacts related to water, air quality, transportation/circulation, biological resources, hazards, noise, and aesthetics (lighting) have been addressed and minimized to a less than significant level with implementation of mitigation measures, as set forth in the mitigated Negative Declaration and incorporated herein.
- SECTION 4.** The underlying zoning district for the Horizon Land PUD is HC, Highway Commercial. Per Section 18.26.020 of the Morgan Hill Municipal Code (MHMC), the Highway Commercial district is intended to provide areas adjacent to the freeway that can accommodate highway and tourist oriented uses, and uses which require the high visibility of thoroughfare locations.
- SECTION 5.** Motor vehicle sales and service is listed as a permitted use in the Highway Commercial zoning district.
- SECTION 6.** The proposed site is one of the few locations within the City that could accommodate and would be appropriate for an automobile dealership. An automobile dealership use would be less impacted than other uses by issues associated with the freeway such as noise and exhaust, and would benefit commercially from the visibility and easier access from the freeway by potential purchasers.
- SECTION 7.** Strict adherence to the city-wide PUD standards would hinder the successful establishment of an automobile dealership within a PUD. The city-wide PUD standards prohibit exterior retail display and require screening of parking areas through landscaping and the placement of building(s), which are in conflict with the requirements of an automobile dealership to visibly display their wares to passers-by. These wares, due to their number and size, are best displayed in an unscreened, parking lot-type facility.

SECTION 8. Therefore, based upon the above reasons, and the record in this matter, the City Council hereby approves exceptions to the city-wide PUD development standards listed below for the proposed automobile dealership. The City Council hereby finds that:

- (a) Approval of the exceptions is necessary for the preservation and enjoyment of substantial property rights of the applicant;
- (b) The exceptions are approved only to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant;
- (c) The effect of the reduction or elimination of the development standards will be substantially mitigated by the provision of other design features or enhancements to the project as set forth in the record and this resolution; and
- (d) Approval of the exceptions will not be outweighed by any adverse effects to the public health, safety or welfare of persons working or residing in the area.

SECTION 9. (a) Section 18.30.090.A.4 of the MHMC prohibits visual flat rooflines in a PUD.

- (b) However, precedent has been established for the approval of buildings designed with parapet walls in other PUDs in the City, specifically the Tharaldson PUD, Gateway PUD and Tennant Station (Safeway) PUD. The existing PUD also utilizes flat roofs on the Holiday Inn Express. Given that existing uses within this PUD and in other PUDs utilize flat roofs. Allowing a flat roof on this use would preserve a substantial property right consistent with other uses in the PUD. The flat roof of the proposed use is used to an extent consistent with other uses in the PUD.
- (c) The flat roof for the proposed use will affect the physical appearance of the building only and will not affect the public health, safety or welfare.
- (d) Therefore, approval of an exception to Section 18.30.090.A.4 would not be a grant of special privilege, but would preserve the property rights of the applicant. Elimination of this development standard for the automobile dealership will be mitigated through the provision of site perimeter landscaping, building perimeter landscaping, and a reduced building profile (30-ft max. height and increased building setback from public roadways), as shown on the project plans.
- (e) Therefore, the City Council approves, on a separate and distinct basis, the use of parapet walls in the design of the automobile dealership building.

SECTION 10. (a) Section 18.30.090.A.18 of the MHMC requires buildings to be placed at the front setback line for at least 35 percent of the street frontage of the PUD, unless infeasible due to the size or configuration of the property.

- (b) The primary intent of Section 18.30.090.A.18 is to screen the view of parking from public roadways. Locating typical commercial retail buildings at the front setback line with parking to the rear generally does not significantly impact business establishments, as parking is incidental to the commercial retail use. However, parking/display areas for an automobile dealership is the primary indicia of such use, and locating the

building at the front setback line with parking to the rear would pose a significant hardship to the commercial viability of the business enterprise. Such restriction would also unduly inhibit the location of an otherwise permitted highway commercial use contrary to the stated purpose of the PUD district as contained in Section 18.30.010 of the MHMC. Therefore, approval of an exception to this standard for the automobile dealership is necessary for the preservation and enjoyment of substantial property rights of the applicant.

- (c) An exception to Section 18.30.090.A.18 of the MHMC for the automobile dealership will be mitigated by the following: 1) a 30-ft wide landscape buffer will be provided along the project frontage, 2) the view of vehicles visible from the freeway will be minimized, and 3) an increased separation will be provided between the auto sales/service use and the residential-zoned property across Condit Road. Also, the future building on Lot D will be constructed at the front setback line in compliance with the development standard, as illustrated on the precise development plan.
- (d) The City Council therefore approves, on a separate and distinct basis, the location of the automobile dealership as shown on the site plan date stamped May 20, 2003.

- SECTION 11.**
- (a) Section 18.30.090.C.12 of the MHMC requires all landscaped areas provided (with the exception of areas adjacent to public streets) to have a minimum width of 10 feet.
 - (b) The intent of Section 18.30.090.C.12 is to provide enhanced landscaping in PUDs. However, precedent has been established for the approval of reduced landscaped areas in other PUDs in the City, specifically the Tharaldson PUD. Therefore, approval of an exception to Section 18.30.090.C.12 would not be a grant of special privilege, but would preserve the property rights of the applicant.
 - (c) The City Council requires that the applicant provide minimum 10-ft wide landscaped areas where possible within all City required parking areas, but hereby approves, on a separate and distinct basis, landscaped areas less than 10-ft in width to improve on-site parking and circulation with the new and used car sales and display areas that are not considered part of the required parking area based on the following findings:

1. The minimum landscape width standard is not met within areas designated for vehicle display. The Code requires landscaping adjacent to setback areas, adjacent to buildings and in parking lots and along drive aisles. Interior portions of vehicle display areas are not required to be landscaped. Thus it would be possible to eliminate all landscaping within this area and meet Code requirements. Requiring landscaping within this area to meet the minimum width requirement would reduce the area which otherwise could be developed, and thereby reduce a substantial property right.
2. Allowing a landscape width of less than 10 feet only where shown on the plans is the minimum exception authorized.

3. Insofar as landscaping is not required within the vehicle display area, there is no practical reduction in the required standard and therefore there is not a need to mitigate for the “reduction or elimination”.
4. Insofar as landscaping is not required within the vehicle display area, provision of landscaping within this area does not constitute an exception and therefore does not create any adverse effects.

- SECTION 12.** (a) Section 18.30.090.E.2 of the MHMC prohibits parking stalls to be located directly adjacent to the front of a major use occupying 10,000 sf or more floor area.
- (b) The intent of Section 18.30.090.E.2 is to facilitate on-site traffic flow and vehicle and pedestrian safety, particularly for typical commercial-retail developments which generate high volumes of vehicle and pedestrian traffic. An automobile dealership generates considerably lower volumes of vehicle and pedestrian traffic than typical commercial retail uses; therefore, potential circulation hazards are not anticipated. Also, precedent has been established for the approval of parking in front of uses occupying 10,000 sf or more floor area in other PUDs in the City, specifically the Condit Road (Harley Davidson) PUD. Therefore, approval of an exception to Section 18.30.090.E.2 would not be a grant of special privilege, but would preserve the property rights of the applicant.
- (c) The City Council therefore approves, on a separate and distinct basis, parking directly adjacent to the front of the automobile dealership building.

- SECTION 13.** (a) Section 18.30.090.E.9 of the MHMC prohibits dead end drive aisles.
- (b) An exception to Section 18.30.090.E.9 is requested only to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant. One dead end drive aisle is proposed on-site to allow screening of a service roll-up door. The dead end drive aisle is located in a service parking area where Ford employees would park the vehicles, and therefore, would not result in circulation impacts. Elimination of the development standard contained in Section 18.30.090.E.9 will be mitigated by the provision of enhanced landscaping to screen the service roll-up door.
- (c) Dead end drive aisles are generally considered inefficient and problematic insofar as they may require drivers to back out of the drive aisle if no vacant parking spaces are available. The single dead end drive aisle is within an area to be used by employees for parking vehicles to be serviced. Employees will be aware that the drive aisle is dead-ended and the number of vehicles parked in this area. Therefore the problems normally associated with dead end drive aisles will not be present in this situation. Requiring this parking area to provide “through” traffic would not address any identified traffic circulation problem and would deprive the applicant the use of this area for screening of a service roll-up door.

- (d) Only one dead end drive aisle is proposed, in the area to be used for parking vehicles to be serviced. This is the minimum extent of the exception necessary.
- (e) The area where the drive aisle will be “blocked off” will be used for screening of the entrance to the service area. This screening is a design feature that will enhance the physical appearance of the property.
- (f) Insofar as only employees of the facility will use the dead end drive aisle, it will not affect the health, safety or welfare of persons working or residing in the area.
- (g) The City Council therefore approves, on a separate and distinct basis, the single dead end drive aisle on the automobile dealership site.

- SECTION 14.**
- (a) Section 18.30.090.F.2 of the MHMC prohibits exterior retail displays in a PUD.
 - (b) The intent of Section 18.30.090.F.2 is to prevent the display/sale of merchandise typically displayed/sold indoors to be placed outdoors where they obstruct pedestrian walkways and are visually distracting and unsightly. Motor vehicle sales and service is a permitted use in the Horizon Land PUD. Motor vehicle sales uses require exterior retail display because of the size and volume of wares. Strict adherence to this standard would preclude the development of an automobile dealership on-site, and deny the property owner the preservation and enjoyment of his substantial property rights.
 - (c) The City’s General Plan calls for highway-related uses to be developed near the City’s freeway interchanges. Auto dealerships are traditionally identified as highway-related uses as most locate, in areas with relatively small populations like Morgan Hill, adjacent to or near highways. The PUD Guidelines for this PUD allow for all uses permitted in the City’s Highway Commercial zoning district. Auto dealerships are permitted uses in the Highway Commercial zoning district. The outdoor display of vehicles is required by auto dealerships because of the size and volume of their products. Prohibition of outdoor display would deprive the applicant of the ability to establish an auto dealership on the property, as allowed by the PUD zoning of the property.
 - (d) The display of vehicles proposed is the minimum necessary for reasonable functioning of the dealership.
 - (e) A minimum of 30 feet of landscaping will be provided between the dealership and Condit Road and Highway 101. This landscaping will help to screen or enhance the appearance of the outdoor vehicle display on the site.
 - (f) Outdoor display will not occur in areas required for public access to or from the site and thus not create any public safety problems.
 - (g) The City Council therefore approves, on a separate and distinct basis, exterior retail display of automobiles on the automobile dealership site.

SECTION 15. The exceptions to the city-wide PUD standards identified in this Resolution shall apply only to the proposed automobile dealership. Development of the hotel and restaurant sites shall be subject to compliance with the city-wide PUD standards, as provided in Section 18.30.090 of the Morgan Hill Municipal Code, unless approved otherwise by the City Council under a separate zoning amendment request.

SECTION 16. Based on the foregoing, the City Council hereby approves a precise development plan to include a 30,027-sf automobile dealership on the northern 6.02 acres, a hotel (maximum 56 rooms) on Lot E, and a sit down restaurant on Lot D, as shown on the plans as contained in that certain series of documents date stamped May 20, 2003 on file in the Community Development Department, entitled "The Ford Store at Morgan Hill" prepared by Fred Goree A.I.A., Architects. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and setbacks of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project. Development of the hotel and restaurant sites shall be subject to compliance with the Horizon Land PUD Guidelines, the city-wide PUD standards, and the Morgan Hill Planning and Zoning Codes.

SECTION 17. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 18. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 19. The approved project shall be subject to the following conditions:

- A. The applicant shall comply with the mitigation measures of the mitigated Negative Declaration.
- B. The project shall be subject to compliance with the Horizon Land PUD guidelines as amended by Exhibit A of this Ordinance. The project shall also be subject to compliance with the city-wide PUD standards as contained in Chapter 18.30 of the Morgan Hill Municipal Code, with the exception of any deviations approved by the City Council.
- C. The signs identified on the project plans are not approved as part of the zoning amendment application. In accordance with the Horizon Land PUD Guidelines, a uniform sign program shall be established for the overall PUD and submitted for review and approval by the Architectural Review Board (ARB).
- D. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free

and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted.

- E. The display of vehicles shall be prohibited in any landscaped area identified on the plans date stamped May 20, 2003.
- F. As part of the site and architectural review process, a City-issued photometric study shall be conducted to evaluate on-site lighting on the automobile dealership site. The photometric study shall identify appropriate lighting levels to minimize light and glare impacts on adjacent properties. At a minimum, lighting levels shall be less intensive than the lighting levels at the existing Chevrolet dealership located at the northwest quadrant of E. Dunne Avenue and Highway 101. The project applicant shall be responsible for the cost of the study, as well as implementation of required mitigation measures. The photometric study shall be reviewed and approved by the Architectural Review Board.
- G. Test driving of vehicles for the automobile dealership use shall be limited to Condit Road and Highway 101, and the small segments of E. Dunne Avenue, Cochrane Road and/or Tennant Avenue required for access to/from the freeway. Test driving of vehicles shall be prohibited along Murphy Avenue. Should Condit Road be realigned to connect with Murphy Avenue as a result of the Murphy Corridor Study, vehicle test driving shall be limited to Condit Road south of the automobile dealership site, the segment of Highway 101 between E. Dunne Avenue and Tennant Avenue, and the small segments of E. Dunne Avenue and Tennant Avenue required for freeway access.

The foregoing ordinance was introduced, as amended, at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of June 2003, and was finally adopted at a regular meeting of said Council on the 2nd Day of July 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1621, New Series, as amended, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd Day of July, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

‘EXHIBIT A’

P U D G U I D E L I N E S

REVISED 6/18/03

Allowed Uses

1. Uses allowed within the PUD shall include all permitted uses of the Highway Commercial zoning district, as specified in the City of Morgan Hill Planning and Zoning Codes, Chapter 18.26, as well as conditionally permitted uses of the Highway Commercial zoning district, subject to issuance of a conditional use permit. Exceptions to permitted and conditionally permitted uses within the PUD include the following:
 - A. A maximum of two hotels shall be permitted within the PUD, including the existing Holiday Express, not to exceed 84 room occupancy and one additional new hotel, not to exceed 56 room occupancy;
 - B. No restaurants with drive-up windows/menu boards, including “quick stop” restaurants, shall be permitted within the PUD, other than the existing Jack-in-the-Box and McDonald’s restaurants; and
 - C. No gas stations other than the existing “Gas and Food” facility shall be permitted within the PUD.

Appurtenant Uses/Devices

2. Uses within the PUD that utilize shopping carts shall provide indoor storage of the carts and shall provide for collection areas throughout the parking lots.
3. Vending machines, rides, newspaper racks or any coin operated devices shall not be placed on the exterior of the retail buildings.

Architecture/Site Planning

4. The general aesthetic character of the building exteriors shall be of a harmonious architectural theme.

- a. Use of structural, architectural design elements, i.e. corridors, arches, modified arches, columns,
 - b. Earthen colors. Colors range from grays, yellows, bone, browns and rust.
 - c. Wall relief (graphics, three dimensional design, etc.)
 - d. Strong window statement (treatment of frame, wood mullions and border.)
 - e. Roof materials on gabled or hipped roofs shall be colored roof tiles, satin finish (non-glossy), barrel type.
 - f. Materials, textures, color and details shall be appropriate expressions of its design concept and function.
5. The existing “Holiday Inn Express” or a replacement motel building on that same site shall be limited to no more than three stories and 35 feet in height. All other buildings within the PUD shall not exceed two stories.
6. Rooflines, except for the existing Holiday Inn Express, shall vary in height, not to exceed 30 ft., and shall incorporate a maximum of two varying roof types (e.g., hip, gable) or a minimum of two varying roof heights will be provided on flat roofed structures.
7. Structures shall incorporate breaks in horizontal planes by stepping or staggering setbacks and recessing windows and entrances, to provide substance and scale.
8. Doors and windows shall be enhanced by use of various sizes and shapes, and highlighted by the use of accent trim or accent colored window framing.
9. The number of materials on the exterior elevation shall be limited to prevent visual overload.
10. All exterior wall elevations visible from and/or facing public roadways shall have architectural treatment. No building surface fronting on a public roadway shall have a flat, void surface without architectural treatment.
11. Facade architectural treatment shall be applied to all building elevations with the same degree of detail as the building entrance.
12. No franchise architecture shall be permitted. Building designs shall incorporate harmonious architectural elements identified in Item No. 4, above, in order to achieve the desired design objectives of the PUD and to create building products that are unique to the City of Morgan Hill.
13. The design criteria for the development shall be included within the CC&R’s.
14. Buildings at the front setback shall provide public access.
15. The design shall be compatible with the immediate environment and provide harmonious transition between various commercial uses.

16. No mechanical equipment shall be exposed on the wall surface of a building.
17. Mechanical and utility equipment shall be located below the roofline or parapet wall and out of public view. Location within the building or at ground level is preferred to roof mounting. When such equipment cannot be so located, all roof-mounted mechanical equipment or ductwork which project vertically above the roof or roof parapet shall be screened by an enclosure which is detailed consistently with the building design.
18. Gutters and downspouts shall be designed elements of the project. Gutters and downspouts that are designed with parapet walls shall be located interior to the wall when adjacent to a roadway frontage. All other gutters and downspouts that cannot be located interior to the wall shall be treated to blend into the facade to which it is attached, unless used as a major design element, in which case the color shall be consistent with the color schemes of the building.
19. All outdoor storage of goods, materials or equipment shall be visually screened up to 8 ft. in vertical height. The screening shall be designed as an integral part of the building design and site layout. Chain link fencing with wood inserts is not an acceptable manner of screening.
20. Trash enclosures shall be constructed of solid masonry material, consistent with the buildings on-site, and shall be a minimum 6 ft. in height, with solid view obstructing gates. Trash enclosures shall be located in inconspicuous locations.
21. Fences and walls shall be designed to be compatible with the surrounding landscape and architectural concepts.
22. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.
23. All buildings shall be protected by an approved automatic fire sprinkler system, per City of Morgan Hill Ordinance.
24. The amount and arrangement of open space and landscaping shall be appropriate to the design and function of the structure.
25. Landscaping shall be compatible with and complement the site planning as well as the design of the building.
26. A representative site plan for the entire PUD which illustrates building envelopes, parking areas, pedestrian access, landscaping, reciprocal easements, sign location, storm water detention and other features shall be included in the development standards. Drawings of building elevations, which embody the style and design concepts for the PUD and represent the level of architectural quality to be achieved, shall be included.
27. Provisions for connecting driveways and walkways with adjacent property owners are to be provided for in each design.

28. Parking lots are to be designed to include curb planters around existing trees where possible.
29. Compressors shall be screened by a wall or fence and be located below the fascia and/or roofline of the building. Further, they shall be located on the rear or hidden side of the building and shall be painted to match the surface to which attached, if that surface is visible.
30. Any future changes in color palette for any building within the Horizon Land PUD shall be reviewed and approved by the Architectural Review Board.
31. All plans shall be subject to site approval by the City of Morgan Hill.

Easements

32. Easements for the installation and maintenance of utilities, walkways, future roads and drainage facilities, and shared driveways shall be recorded as part of any subdivision map or lot line adjustment. Other easements, such as paved parking shall be recorded as an offer of easement if secondary users are unknown.

Grading

33. The practice of balanced grading shall be implemented to the greatest extent possible.

Landscaping

Design criteria for landscaping shall be consistent throughout the PUD. Each development within the PUD shall follow the requirements contained herein when preparing their landscaping plans. Additional landscaping design criteria is available from the City of Morgan Hill, Planning Division.

34. The general characteristics of the plant palette for the PUD shall be a combination of year round color and textural interest. Plants shall be selected on the basis of color combinations, growth patterns, low maintenance and water conservation characteristics. At time of installation, the tree sizes shall be a minimum of 15 gallon and 24 inch box material.
35. At time of installation, all shrub planting shall be a minimum of 5-gallon size, unless otherwise approved by the Community Development Department. Minimum 15-gallon containers shall be installed along the project frontage(s) with minimum shrub height of three feet, unless otherwise required by the Architectural Review Board.
36. All street trees and trees planted within the front setback areas shall be a minimum of 24-inch box size.
37. The street trees shall be consistent with the City Morgan Hill Master Street Tree program.
38. A minimum 30-foot wide landscape area (excluding any landscaping in the right of way)

shall be provided adjacent to all public streets within the PUD.

39. Landscaping shall be placed adjacent to a minimum of 50 percent of a building's perimeter.
40. Landscaping at the entrance of a building shall include box size and/or accent trees to create a focal point to help direct people to the building entrance.
41. Native oaks and fieldstones shall be incorporated into the landscape plan.
42. A minimum of 15 percent of all required parking areas shall be landscaped. Required setback and perimeter planting areas shall not be counted in this area, but may include the building perimeter landscaping.
43. A canopy like tree shall be planted in the parking lot planter islands to produce shade.
44. The entrance to the PUD shall be well landscaped and serve as a focal point.
45. Landscaping shall be compatible with, and complement the site planning, as well as the architecture of the building. Plantings in parking lots shall help soften and visually tie the buildings to landscaping.
46. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.
47. The developer shall be required to follow the landscape design criteria, which is available from the City of Morgan Hill, Community Development Department. A landscape buffer shall be established, as required, to provide screening and noise abatement from the highway.
48. All parking areas shall be screened from view of public streets by use of berming or masonry walls of a minimum three-foot effective height.
49. Proper trimming and pruning of trees within the Horizon Land PUD will be monitored by the City of Morgan Hill. The improper "Topping" of trees will be prohibited.
50. Any future alterations or modifications of the landscaping within the Horizon Land PUD shall be reviewed and approved by the Architectural Review Board.
- 50a. Landscaping and berming within the 30-foot Condit Road frontage shall be designed so as to mitigate noise generated on site.

Lighting

51. The design of the exterior building lighting and parking lot lighting fixtures shall be compatible with the architecture to be used in the development.
51. As part of the site and architectural review process, a City-issued photometric study shall be conducted to evaluate on-site lighting on the automobile dealership site. The photometric study shall identify appropriate lighting levels to minimize light and glare

impacts on adjacent properties, in particular the residential-zoned properties to the east across Condit Road. At a minimum, lighting levels shall be less intensive than the lighting levels at the existing Chevrolet dealership located at the northwest quadrant of E. Dunne Avenue and Highway 101. The project applicant shall be responsible for the cost of the study, as well as implementation of required mitigation measures. The photometric study shall be reviewed and approved by the Architectural Review Board.

52. Lighting for pedestrian pathways shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
53. All lighting shall be shielded and directed in such a manner so as not to produce harmful effects upon neighboring property.
54. The lighting for all of the uses within the PUD shall be subject to review and approval of the Community Development Director. Adjustments to the lighting intensity may be requested after commencement of the use.

Parking and Loading/Circulation

55. Parking shall be screened from public view through the use of berming, hedgerow planting, shrubs, trees, fences or walls, or any combination thereof, provided that no more than 35% of the total screening shall consist of fences or walls. At time of installation, shrub plantings shall be minimum 5-gallon size, trees shall be a minimum 15-gallon, and berming/fences/walls shall be a minimum 3 ft. in height.
56. No angled parking or one-way drive aisles shall be utilized in the parking lot.
57. A maximum of one-third of total parking for the Planned Unit Development (PUD) shall be allowed to front Condit Road, or be located in front of the main development frontage with the exception of auto sales related retail.
58. Parking for the restaurant parcel shall be restricted to the rear or side of the building, and shall not front Condit Road.
59. Parking areas shall be designed to include provision for pedestrian walkways to provide access to building entrances. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, narrowed roadway, or combination thereof. Walkways shall be provided through landscaped areas to protect landscaping from foot traffic damage.
60. Parking areas of adjoining property owners shall be located to utilize shared or reciprocal access and shared parking whenever possible.
61. Loading areas and docks shall be screened from view by a solid wall. The wall shall be architecturally treated and screened with landscaping. Loading areas shall not be located adjacent to or visible from Condit Road or Dunne Avenue.

62. Truck deliveries to the Ford dealership shall be restricted to the hours of 9 a.m. to 4 p.m., Monday through Saturday, to minimize traffic/circulation conflicts, and loading/unloading of automobiles shall be conducted entirely on-site. Truck deliveries to all other uses in the PUD shall be limited to 7 a.m. to 7 p.m., Monday through Saturday.
63. Parking lots shall be designed to provide for safe and efficient movement of vehicles between properties by providing joint access easements and reciprocal easements wherever possible.
- 63a. All employee and customer parking shall be provided on-site.
64. Cross access easements and drive aisles shall be provided throughout the PUD.
65. Drive aisles shall allow for complete circulation within the PUD, with sufficient width for emergency vehicles, and shall not include dead end drive aisles.
66. PUD driveways shall align with those across the street.
67. Drive aisles shall align and be situated perpendicular to the main building frontage.
68. Adequate auto stack-up areas shall be designed to permit a minimum of two cars to enter the parking lot area without obstructing either street through traffic or vehicle backup areas within the parking lot.
69. The number of curb cuts connecting the site with collector or arterial streets shall be minimized.
70. Mutual access easements and mutual driveways shall be used to minimize paved areas and curb cuts.
71. A minimum of a 5 ft. wide walkways or landscaping shall be provided around architectural features to provide a visual of pedestrians crossing into the drive aisle from the storefronts.
72. Access to the property and circulation thereon shall be safe and convenient for pedestrians, cyclists, and vehicles. Vertical and horizontal sight lines shall be sufficient to ensure safe vehicular and pedestrian movements.
- 72a. Test driving of vehicles shall be limited to Condit Road, Highway 101 and segments of E. Dunne Avenue, Cochrane Road and/or Tennant Avenue required for access to and from the freeway. Test driving of vehicles is prohibited along Murphy Avenue, on Condit Road north of Main Avenue and south of Dunne Avenue and on East Dunne Avenue, east of Condit Road.

Signage/Displays

73. A uniform sign program identifying locations of signs both on- and off-site shall be prepared for review and approval of the Community Development Department, as part of the Architectural and Site Review Process.
74. PUDs which are, due to their location, eligible for freeway signage shall utilize a single freeway sign consistent with the provisions of the City sign ordinance.
75. Monument freestanding signs shall be allowed for those uses located adjacent to the Condit Road frontage, in compliance with the City of Morgan Hill Planning and Zoning Codes, Section 18.76.250.
76. Signs shall be approved by the City of Morgan Hill at the time of site review. Signs shall have design elements and colors consistent with the Mediterranean architecture theme of the PUD. Individually mounted channel letters shall be utilized for building attached signs.
77. Address numbers shall contrast with their background, and shall be six inches in height. Address numbers shall also occur on the monument sign.
78. With the exception of automobile display, no exterior retail displays shall be allowed.

Utilities

79. There shall be shared use storm water detention facilities. Location and method of storm water mitigation shall be reviewed and approved as part of the Architectural and Site Review process.
80. A maximum of one detention pond, or one interlinked detention pond system with one outfall into the Madrone Channel, shall be used to serve the entire development. The detention pond shall not be located within any setback area and shall not be visible from any public street.
81. All backflow devices, fire risers and check valves shall be screened with landscaping.
82. All future development applications shall be subject to review and condition of the appropriate utility and public service providers for the City of Morgan Hill.
83. No utility equipment shall be located within the front setback area unless placed within an underground vault. All transformers shall be located interior to the site, outside of the front setback area, and shall be screened with landscape material.

Noise

84. Uses within the PUD shall not use any exterior public address systems or other noise intrusive communication systems.

General Provisions

85. Any modification to these PUD Guidelines shall be subject to review and approval of a PUD Guidelines Amendment.
86. Any flag poles installed on-site shall not exceed 30 feet in height.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

Agenda Item # 7

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1622, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1568, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE-SINGH TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APN 764-23-054; DAA-00-08: BERKSHIRE - SINGH)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1622, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 18, 2003, the City Council Introduced Ordinance No. 1622, New Series by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1622, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1568, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE-SINGH TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APN 764-23-054; DAA-00-08: BERKSHIRE - SINGH)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 01-17, adopted April 25, 2000, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 00-01: Berkshire-Singh	1 for FY 1999-2000 3 for FY 2000-2001

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. The applicant is requesting to amend the approved development agreement amendment approved under Ordinance No. 1568 to allow for a six-month extension of time for 4 building allotments, due to delays not the result of developer inaction. Delays in the project processing have occurred due to extended County processing of the improvement plans for Hale Avenue. An Exception to Loss of Building Allocation is granted, extending the deadline for building permit issuance for the four Measure P units from April 1, 2003 to September 30, 2003, and extending the deadline for commencement of construction of the four units from June 30, 2003 to December 30, 2003.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty

(30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. Exhibit A of the development agreement is amended to read as follows:

EXHIBIT "A"

**DEVELOPMENT SCHEDULE FOR MP-00-01: BERKSHIRE - SINGH
FY 1999-2000 (1 UNIT), FY 2000-2001 (3 UNITS)**

I. SUBDIVISION AND ZONING APPLICATIONS	
Applications Filed:	May 30, 2000
II. SITE REVIEW APPLICATION	
Application Filed:	November 1, 2000
III. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds:	November 15, 2000
IV. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check:	
FY 1999-2000 (1 unit):	February 1, 2003 March 24, 2003
FY 2000-2001 (3 units):	February 1, 2003 March 24, 2003
V. BUILDING PERMITS	
Obtain Building Permits:	
FY 1999-2000 (1 unit):	April 1, 2003 September 30, 2003
FY 2000-2001 (3 units):	April 1, 2003 September 30, 2003
Commence Construction:	
FY 1999-2000 (1 unit):	June 30, 2003 December 30, 2003
FY 2000-2001 (3 units):	June 30, 2003 December 30, 2003

Failure to obtain building permits and commence construction by the date listed in Section V. above, shall result in the loss of building allocations. Failure to submit a Final Map Application or a Building Permit Submittal, Sections III. and IV., respectively, six (6) or more months beyond the filing dates listed above, shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above, Sections III. and IV., respectively, may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 2 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of June 2003, and was finally adopted at a regular meeting of said Council on the 2nd Day of July 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1622, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd Day of July, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

Agenda Item # 8

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1623, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1535, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-21: MISSION VIEW-DIVIDEND HOMES TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APNs 728-32-001, 002, 003 & 728-33-001; DAA-01-07: Cochrane-Mission View)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1623, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 18, 2003, the City Council Introduced Ordinance No. 1623, New Series by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1623, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1535, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-21: MISSION VIEW-DIVIDEND HOMES TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APNs 728-32-001, 002, 003 & 728-33-001; DAA-01-07: Cochrane-Mission View)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 01-05, adopted February 27, 2001, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 00-21: Mission View-Mission Ranch	15 building allotments

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. The applicant is requesting to amend the approved development agreement approved under Ordinance No. 1535 to allow for a six-month extension of time for 15 building allotments, due to delays not the result of developer inaction. Delays in the project processing have occurred due to extended environmental review, permitting and review of outside agencies and accommodation of a City well on the project site. An Exception to Loss of Building Allocation is granted, extending the deadline for building permit issuance for the 15 building allotments awarded for fiscal year 2002-03, from May 8, 2003 to September 30, 2003, and extending the deadline for commencement of construction of the fifteen units from June 30, 2003 to December 31, 2003.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this

ordinance pursuant to §36933 of the Government Code.

SECTION 8. AMENDED DEVELOPMENT AGREEMENT. The amended development agreement, attached as Exhibit A, shall replace the agreement approved under Ordinance No. 1535.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of June 2003, and was finally adopted at a regular meeting of said Council on the 2nd Day of July 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1623, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd Day of July, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

Agenda Item # 9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1624, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.050 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1624, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 18, 2003, the City Council Introduced Ordinance No. 1624, New Series by the Following Roll Call Vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.

FISCAL IMPACT:

The proposed increases would allow the City to fully recover the cost of new facilities from new development to the extent that new development benefits from these improvements.

ORDINANCE NO. 1624, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.050 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES

WHEREAS, new development within the City of Morgan Hill will result in additional population and business growth, and such growth will place additional burdens on various city facilities, infrastructure and services, requiring construction of expanded and/or new city facilities and services; and,

WHEREAS, all development within the City of Morgan Hill should bear a proportionate financial burden in the construction and improvement of public facilities and services which are necessary to serve the growth engendered by such development; and,

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and,

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and,

WHEREAS, consistent with these principles, Chapter 3.56 of the Municipal Code of the City of Morgan Hill establishes Development Impact Mitigation Fees; and,

WHEREAS, Section 3.56.060 of the Municipal Code of the City of Morgan Hill provides for revision of established fees, including increases, by resolution; and,

WHEREAS, the City Council of the City of Morgan Hill has received and duly considered the reports entitled "Development Impact Fee Study," dated May 9, 2002, authored by DMG Maximus, and has considered additional staff analysis presented to the City Council on June 18, 2003; and,

WHEREAS, based upon the DMG Maximus report and City staff analysis, and the evidence presented to it, the City Council deems it necessary that development impact fees be adjusted to ensure that new development in the city pays its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and,

WHEREAS, the adjustment of development impact fees necessitates minor revisions to the Municipal Code provisions regarding such fees; and,

WHEREAS, a public hearing on adoption of this ordinance was duly noticed, and held as part of a regular City Council meeting held on June 18, 2003, at 7:30 p.m. in the Council chambers located at City Hall, 17555 Peak Avenue; and,

WHEREAS, the City Council has received and duly considered all written and verbal comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and,

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3.56.030 of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

“A. The following development impact fees are established and imposed on the issuance of all building permits for development within the city to finance the cost of the following categories of public facilities and improvements required by new development;

1. General Facilities and Equipment. A development impact fee is established for general facilities and equipment.

2. Wastewater Treatment Facilities. A development impact fee is established for wastewater treatment facilities, trunk line and collection system.

3. Public Safety Facilities, Equipment and Training. A development impact fee is established for law enforcement facilities, equipment and training.

4. Storm Drainage Facilities. A development impact fee is established for storm drainage facilities.

5. Park and Recreation Facilities. A development impact fee is established for park and recreation facilities.

6. Streets, Thoroughfares and Traffic. A development impact fee is established for streets and thoroughfares.

7. Water System Facilities. A development impact fee is established for the water system including land acquisition for wells and tanks.

8. Open Space Facilities. A development impact fee is established for open space facilities.

9. Library Facilities. A development impact fee is established for library facilities.

10. Community and Recreation Centers. A development impact fee is established for community and recreation centers.

11. Administrative Overhead. A development impact fee is established for administrative overhead to cover the cost of general administration of this chapter and any resolution adopted pursuant hereto, performance of accounting tasks associated herewith, supervision and handling of funds, preparation and/or updating of master facilities plans and/or capital financing plans, and the like. This fee shall be set as a percentage of the fees

set forth in subsections (A)(1) through (A)(10) above, which are collected pursuant to this chapter. This fee does not relate to and is not designed to cover administrative costs incurred by the city in the case of any specific public facilities constructed with the fees referenced in subsections (A)(1) through (A)(10), since such project specific administrative costs are included in and shall be recovered from such fees.

B. The city council shall, by resolution, set forth the specific amount of the fees, describe the benefit and impact area on which the fees are imposed, list the specific public improvements to be financed and describe the estimated cost of these facilities.”

SECTION 2. Section 3.56.050 of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

“Each fee, other than the police impact fee, imposed by this chapter shall be adjusted automatically on January 15th of each fiscal year, beginning on January 15, 2004, by a percentage equal to the Engineering Cost Index as published by Engineer News Record for the twelve month period ending the previous March. This automatic adjustment shall not apply to fees which are based on variable factors which result in automatic adjustments or those which specifically indicate otherwise.”

SECTION 3. Section 3.56.070 of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

“Each fee collected pursuant to this chapter shall be deposited in a special fund created to hold the revenue generated by each such fee. Monies within each such fund may be expended only by appropriation by the city council for specific projects which are of the same category as that for which the money was collected. In this regard, the following special funds are created and established for the purposes indicated:

A. A general facilities and equipment fund is established. The general facilities and equipment fund is a fund for payment of the actual or estimated costs of constructing and improving the general municipal facilities within the city, including any required acquisition of land.

B. A wastewater treatment facilities fund is established. The wastewater treatment facilities fund is a fund for payment of the actual or estimated costs of constructing and improving the sewage treatment facilities within the city, and related trunkline and collection system, including any required acquisition of land.

C. A public safety facilities, equipment and training fund is established. The public safety facilities, equipment and training fund is a fund for payment of the actual or estimated costs of actual or estimated costs of public safety, such as police and fire, facilities, equipment and training, including any required acquisition of land.

D. A storm drainage facilities fund is established. The storm drainage facilities fund is a fund for payment of the actual or estimated costs of constructing and improving the storm drain facilities within the city, including any required acquisition of land.

E. A park and recreation facilities fund is established. The park and recreation facilities fund is a fund for payment of the actual or estimated costs of constructing and improving the park and

recreation facilities within the city, including any required acquisition of land, as well as grading, irrigation and turfing costs associated therewith.

F. A streets and thoroughfares fund is established. The streets and thoroughfares fund is a fund for payment of the actual or estimated costs of the design, upgrading or improvement of the traffic network, including traffic signalization and any required acquisition of land.

G. A water system facilities fund is established. The water system facilities fund is a fund for payment of the actual or estimated costs of replacement, quality improvement, and capital expansion of the water system, including land acquisition for wells and tanks.

H. An open space facilities fund is established. The open space facilities fund is a fund for payment of the actual or estimated costs of the design, improvement and acquisition of facilities or land used for the purposes of improving open space considerations.

I. A library facilities fund is established. The library facilities fund is a fund for payment of the actual or estimated costs of the design, upgrade or improvement of library facilities available for use by the general public.

J. A recreation and community centers facilities fund is established. The recreation and community centers facilities fund is a fund for payment of the actual or estimated costs of constructing and improving the community and recreation center facilities within the city, including any required acquisition of land.

K. An administrative overhead fund is established. The administrative overhead fund is a fund for payment of the actual or estimated costs of administering the provisions of this chapter any resolutions adopted pursuant thereto, all consistent with the provisions of Section 3.56.070.”

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(4), the City Council finds that this ordinance is exempt from the California Environmental Quality Act.

SECTION 6. Effective Date; Publication. This Ordinance shall take effect from and after sixty (60) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of June 2003, and was finally adopted at a regular meeting

of said Council on the 2nd Day of July 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1624, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd Day of July, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

Agenda Item # 10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1625, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1564, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-31: CHURCH – SOUTH COUNTY HOUSING TO ALLOW FOR A SIX MONTH EXTENSION OF TIME FOR 36 BUILDING ALLOTMENTS RECEIVED IN THE 2001 RDCS COMPETITION. (APN 817-02-002, 003, 004, 005, 022, 023 & 038)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1625, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 18, 2003, the City Council Introduced Ordinance No. 1625, New Series by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1625, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1564, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-31: CHURCH – SOUTH COUNTY HOUSING TO ALLOW FOR A SIX MONTH EXTENSION OF TIME FOR 36 BUILDING ALLOTMENTS RECEIVED IN THE 2001 RDCS COMPETITION. (APN 817-02-002, 003, 004, 005, 022, 023 & 038)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 01-72, adopted September 25, 2001, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-00-31 (Church St. Apartments)	36

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has in a timely manner, submitted necessary planning applications to pursue development. The applicant is requesting to amend the approved development agreement approved under Ordinance No. 1564 to allow for a six-month extension of time for 36 building allotments, due to delays not the result of developer inaction. Delays in the project processing have occurred due to not obtaining a tax credit allocation necessary to obtain financing. The California Tax Credit Allocation Committee process is very competitive and the project was unable to obtain a tax credit in the first application submitted in July 2002. A second application was submitted on March 26, 2003 and a tax allocation was awarded to the project in June 2003. An Exception to Loss of Building Allocation is granted, extending the deadline for building permit issuance for the 36 building allotments awarded for fiscal year 2002-03, from April 1, 2003 to September 30, 2003, and extending the deadline for commencement of construction of the fifteen units from June 30, 2003 to December 31, 2003.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. AMENDED DEVELOPMENT AGREEMENT. The amended development schedule, attached as Exhibit A, shall replace the schedule approved under Ordinance No. 1564.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of June 2003, and was finally adopted at a regular meeting of said Council on the 2nd Day of July 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1625, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd Day of July, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT "A"

AMENDED DEVELOPMENT AGREEMENT EXHIBIT "B"

DEVELOPMENT SCHEDULE MP-00-31: Church - South County Housing
FY 2002-2003, FY 2003-2004

- | | | |
|------------------------|--|---|
| I. | SUBDIVISION AND ZONING APPLICATIONS | |
| | Applications Filed: | July 1, 2001 |
| II. | SITE REVIEW APPLICATION | |
| | Application Filed: | July 1, 2001 |
| III. | BUILDING PERMIT SUBMITTAL-2002-03 | July 1, 2002 April 14, 2003 |
| | Submit plans to Building Division for plan check: | |
| IV. | PULL BUILDING PERMITS-FY 2002-03 | April 1, 2003 September 30, 2003 |
| | <u>36 permits</u> must be pulled from the Building Division: | |
| V. | COMMENCE CONSTRUCTION-FY 2002-03 | June 30, 2003 December 31, 2003 |
| | Construction must have begun on 36 permits. | |
| VI. | BUILDING PERMIT SUBMITTAL 2003-04 | April 1, 2002 |
| | Submit plans to Building Division for plan check: | |
| VII. | BUILDING PERMIT SUBMITTAL 2003-04 | July 1, 2003 |
| | Submit plans to Building Division for plan check: | |
| VI. | PULL BUILDING PERMITS-FY 2003-04 | April 1, 2004 |
| | <u>13 permits</u> must be pulled from the Building Division: | |
| VII. | COMMENCE CONSTRUCTION-FY 2003-04 | June 30, 2004 |
| | Construction must have begun on 13 permits. | |

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submittal of a Final Map Application or a Building Permit, two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 25 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

~~City agrees to conditionally issue all building permits and approvals on or before February 1, 2003. City will issue the 13 Measure P 2003-2004 permits on or before February 1, 2003, in order to meet State requirements for awarding Low Income Housing Tax Credits. However, Developer agrees not to take any action to begin construction upon reliance on said Measure P permits until after April 1, 2003.~~

**CITY OF MORGAN HILL
CITY COUNCIL MEETING
MINUTES – JUNE 18, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:09 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate, and Mayor Kennedy.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSIONS:

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:15 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:12 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced no reportable action taken in closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the special meeting at 7:12 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 25, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:02 P.M.

ROLL CALL ATTENDANCE

Present: Mayor Kennedy
Council Members Carr, Chang, Sellers, and Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:04 P.M.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:03 P.M.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced there were no actions taken in closed sessions.

ADJOURNMENT

Mayor Kennedy adjourned the meeting at 10:15 P.M.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 18, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:09 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

OTHER BUSINESS:

1. PLANNING COMMISSION INTERVIEWS/APPOINTMENTS

Council Services and Records Manager Torrez presented the staff report.

The City Council interviewed candidates for the four vacant positions on the Planning Commission, and appointed the following candidates to fill terms ending June 1, 2007: Robert Engles, Robert Escobar, Ralph Lyle, and Joseph Mueller.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.
CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant Exposure/Initiation of Litigation
Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 3

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:15 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:12 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Rich Gamboa, Independence Day Inc. (IDI), led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented a Proclamation to Director of Human Resources Fisher, designating June 23, 2003, as *United Nations Public Service Day*.

RECOGNITIONS

Mayor Kennedy presented Sarah Flowers with a Certificate of Recognition on her recent promotion to Deputy County Librarian.

CITY COUNCIL REPORT

Council Member Sellers stated that recently the Greenbelt Alliance brought forth their perspective and a General Plan for the development of Coyote Valley. He indicated that a majority of Council members were in attendance at the meeting and felt that this underscores the importance to the City of Morgan Hill of Coyote Valley development. He said that the Coyote Valley will impact Morgan Hill far more than it will impact the City of San Jose. Being discussed is a City approximately 2-3 times the size of Morgan Hill existing to the north which will be a massive development. He said that the population and some industrial development will be impacted and that there will continue to be a significant buffer that will exist between Morgan Hill and the southern edge of San Jose. The Greenbelt Alliance is looking at some interesting ways of providing a buffer such as developing an agricultural industry. He felt that as citizens, everyone needs to be diligent in watching the process move forward. He noted that the City of

San Jose has not deemed it worthwhile to have the City of Morgan Hill participate directly. However, he felt that it was important to let the City of San Jose know that the City of Morgan Hill is very interested in this process as we are very well aware of the impacts to Morgan Hill. He indicated that a lot of activity has been taking place in the downtown in recent weeks. One of the events to take place on June 26 is the Morgan Hill Downtown Association's annual meeting. He indicated that this is a good opportunity for individuals to know what is going on in the downtown. He encouraged the community to participate at this meeting or contact the Downtown Association if individuals want to get involved with the downtown.

COUNCIL SUBCOMMITTEE REPORT

No reports presented.

CITY MANAGER REPORT

City Manager Tewes reported that the Morgan Hill Community Health Foundation was organized to restore medical services in the community. The City Council has provided tax resources to help support this effort. The Foundation has also undertaken significant community fundraising, noting that the Foundation recently reported that a fundraiser netted approximately \$75,000 or more. This will allow them to receive matching funds from the City from the remaining \$70,000 that is available from the initial appropriation.

City Manager Tewes reported on the results of a court hearing held today. He said that over the weekend, some fliers were circulating in parts of the community expressing concern about the possible release into Morgan Hill of an individual designated to be a high risk sexual offender, Brian DeVries. The City Manager indicated that Mr. DeVries has served his time and is due to be released. He has also received care from the Department of Mental Health and they are trying to find a residence in Santa Clara County where he might be released. At the court hearing held today before Judge Baines, it was found that the law in California requires the Department of Mental Health to locate a residence for Mr. DeVries in Santa Clara County only. Judge Baines directed the Department of Mental Health to explore all options for obtaining a residence for Mr. DeVries, including areas outside the County. Judge Baines indicated that he would not approve the release of Mr. DeVries to any California community unless there has first been adequate notice and consultation with local officials, local police and the public. He noted that this has not happened to this point. He indicated that there will be another hearing held on June 27 at 1:30 p.m. in Judge Baines' court to hear a report from the Department of Mental Health. He stated that Mayor Kennedy wrote to the court expressing the City's concern regarding the potential release of Mr. DeVries into the community. He felt that it would be appropriate for the community to follow up and let the governor and others know of concerns, not just of the release of Mr. DeVries, but about the necessity of consulting with local officials in advance rather than afterwards.

Mayor Kennedy stated that he received several phone calls and e-mail messages from members of the Morgan Hill community on the situation relating to Mr. DeVries. He read into the record a letter he faxed to Judge Baines yesterday so it would arrive before the public hearing scheduled this morning at 9:00 a.m. In this letter, he expressed his deep concerns and those of the residents of Morgan Hill over the potential release of Brian DeVries into the community. He indicated that the City will continue to place pressure on the State and the judge to ensure that Mr. DeVries is not located in Morgan Hill.

Council Member Sellers indicated that the City will continue to fight hard to make sure that the release does not take place in Morgan Hill. He appreciated the efforts of the Mayor, Council Member Carr and the staff who worked hard to make sure that the community's concerns were presented today.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Department of Mental Health tries to find locations to release high risk offenders where they can be supervised and receive continued counseling, and meet conditions of release. The Department of Mental Health takes potential sites to the judge for approval. The judge looks at all factors, weighs them and determines the appropriate place of release. During the process, the judge will take public comment, consult with local officials, and consider input. However, this does not occur until such time as the Department of Mental Health has recommended sites. She said that staff and the Council will try to actively monitor to ensure that one of the considered sites is not in Morgan Hill. She said that the hearing on June 27 is not a public hearing and that it may be that the judge may not take public testimony at that time as they may not have found a site for Mr. DeVries to be located. She indicated that citizens can contact her office or other city offices if they would like to receive further clarification about the process. She distributed the Monthly Litigation Summary, noting that there were no changes this month.

OTHER REPORTS

Mayor Kennedy announced the upcoming reenactment the Sister City Signing Ceremony to take place on June 25 at 4:00 p.m. with San Casciano, Italy at the Community and Cultural Center, El Toro Room. He indicated that San Casciano's Mayor Roselli, family members and several other delegation members will be in attendance at the signing ceremony and that they will be a part of the Fourth of July festivities.

PUBLIC COMMENT

Cindy Gobin inquired as to the status of a test garden to test for the presence of perchlorate in vegetables and fruits with Morgan Hill water.

Mayor Kennedy stated that he attended a meeting held last week by the Citizens Advisory Committee on Perchlorate in San Martin, as well as holding discussions with the City Manager and City Attorney. He indicated that Ms. Gobin has been contacted and invited to attend the Perchlorate Medical Advisory Group that is meeting in San Martin. He felt that the results require a very specific analysis that the City is not equipped to handle. Therefore, it would not be appropriate for Morgan Hill to conduct the test garden. He felt that the City needs to keep pressure on those responsible for testing, including the County Agricultural Commissioner and other state wide organizations to conduct this kind of test work.

Ms. Gobin clarified that it was never her intention that the City of Morgan Hill should pay or actually perform the testing. She wanted the City to pressure the responsible parties to do the testing of produce grown with Morgan Hill city water.

Mayor Kennedy indicated that he would continue to keep the pressure on the Santa Clara County Agricultural Commissioner to get this done and encouraged Ms. Gobin to do the same on the Medical Advisory Group and the San Martin Perchlorate group.

Fran Odems inquired whether the vendors who place their stands at various intersections in Morgan Hill have permits to sell produce and fruits. She noted that individuals come from out of the area from places such as Lodi, Stockton, Modesto, and Salinas to sell their crops and fruits. She inquired what happens to local growers when outsiders come into the community.

City Manager Tewes indicated that the locations identified by Ms. Oden (Tennant/Hill) are located in the unincorporated section of the County and are not under the jurisdiction of the City. He stated that local farmers are allowed to sell produce at their location. He was not aware of any licensed or permitted fruit stands in the City limits.

Director of Community Development Bischoff said that the City does not allow the sale of agricultural products unless it is on the property in which the produce is grown. If there are any fruit stands in the City, they are not licensed as the City prohibits them.

Ms. Odems said that she was told that the reason outside vendors come to Morgan Hill is attributed to the fact that local growers do not wash or clean their produce. They come to Morgan Hill because their fruits are washed, cleaned and packaged nicely.

Mayor Kennedy requested that staff contact the County and advise them of the concerns raised this evening.

City Manager Tewes announced that the City has a certified Farmer's Market that is organized on Saturdays in the downtown. Some individuals come from other areas outside Santa Clara County. As this is a certified Farmer's Market, the produce is cleaned, washed and healthful for individuals who purchase the produce.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items 3, 4 and 5, Council Member Sellers requested that item 6, and Council Member Tate requested that item 11 be removed from the Consent Calendar.

City Attorney Leichter clarified that there was a substitute contract which had some clarifications to item 4, paragraph 3 and that it was not necessary to pull it from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2, 4, and 7-9, as follows:*

2. **MAY 2003 FINANCE & INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

4. **APPROVAL OF PURCHASE AGREEMENT WITH MORGAN HILL UNIFIED SCHOOL DISTRICT (MHUSD) FOR BURNETT AVENUE WELL SITE**

Action: ***Approved** Purchase Agreement with Morgan Hill Unified School District Conveying Burnett Avenue Well Site, as amended.*

7. **COMCAST SEWER/TRAFFIC FEE FINANCING**

Action: *1) **Approved** a Sewer/Traffic Fee Financing Agreement of \$235,020 for up to Two Years to Comcast Cable Communications, Inc. for 18665 Madrone Parkway; and 2) **Authorized** the City Manager to do Everything Necessary to Execute the Sewer/Traffic Fee Financing Agreement.*

8. **APPROVAL OF CONTRACT FOR INTERIM MAINTENANCE SUPERVISOR**

Action: ***Approved** the Agreement and **Authorized** the City Manager to Execute a Contract to Continue the Contract Services of an Interim Maintenance Supervisor, Subject to City Attorney Approval.*

9. **AWARD BID FOR SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) TELEMETRY REPLACEMENT PROJECT**

Action: *1) **Authorized** the Transfer of \$278,140 (const) From Project #607A98 (Jackson Oaks Booster Station) to Project #606093 (Replacement SCADA); 2) **Awarded** Contract in the Amount of \$1,254,845 to Tesco Controls, Inc. for the SCADA Replacement Project; 3) **Authorized** the Issuance of CCO#1 for the SCADA Project to Deduct Work Items Totalling Approximately \$330,555; 4) **Authorized** \$135,000 (15%) Construction Contingency for the Project; and 5) **Approved** Professional Services Contract in the Amount of \$101,942 for Telemetry Construction Support Services with Carollo Engineers.*

3. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. TO CO-SPONSOR THE JULY FOURTH CELEBRATIONS

Rich Gamboa, Vice President of IDI, introduced other IDI Committee Members in attendance this evening: Bruce Tichinin, president; Bob and Maureen Hunt, parade chairs; Jeff Roth, Fundraising chair; Karen Crane, Patriotic Sing; Charles Weston, 5-K race; and Brad Jones. He provided the Council with an overview of events which include the following activities: golf tournament, patriotic sing, street dance, 5-K race, parade, family festival and the fireworks display. He acknowledged the support from the City Council, staff and the public that help sponsor the Fourth of July event. He thanked the Council for its support and for considering the request for services and funding for this year's festivities. He indicated that IDI recently received the final quote on the liquor liability insurance that went up to \$2,500. This increase pushed IDI's amended request to \$24,400. The cash amount that is needed in advance for the increase in insurance premiums is acceptable and budgetable. It was his hope that the possible increase in total service fees will help defray any possible increase from the City in terms of services when they are billed to IDI. He said that the growth in IDI budget has come from the growth of the City and the increase in insurance experienced after September 11 in terms of all of the liability policies that must be paid prior to putting on this event. He said that IDI, as a committee, is as strong as ever and that it is expected that this event will be as great as ever.

City Manager Tewes stated that the funding source comes from the Community Promotions budget and that the amount of funds being recommended for this total function reflects the amount spent last year in light of the reductions being taken elsewhere in the City's budget. Should the Council appropriate \$25,000, it would leave \$5,000 for all the other community promotions in Fiscal Year 2003-04.

Council Member Tate did not believe that the remaining \$5,000 would be much, noting that part of this budget is the YES budget and that he was protective of the YES budget. He indicated that the funding under YES will help sponsor a Battle of the Bands on Friday. He said that the Council has its budget to consider as well.

Council Member Sellers said that with the exception of YES and IDI, the Council has been reluctant to participate in a lot of activities using these funds. He felt that as long as there is \$5,000 in the Community Promotion's budget to match what was done with YES last year, that he was comfortable with his recommendation of a contribution funding and in-kind services not to exceed \$25,000.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Authorized** the City Manager to Sign the Agreement to Co-sponsor the July Fourth Celebrations and Support Independence Day Inc. by Contributing Funding and In-kind Services, Not to Exceed \$25,000.*

5. SHARKS IN THE PARK SPONSORSHIP FOR YOUTH ADVISORY COMMITTEE ACTIVITY

Brittany Bach, Secretary of the Youth Advisory Committee, and Jonathan O'Mahan, Youth Advisory Committee Member, brought the Council up to date on the information they have about a new program called Shark's in the Park Program. Mr. O'Mahan indicated that this is a program put on by the San Jose Sharks, NHL and Nike. He indicated that cities apply for the program and that Nike and the NHL bring street hockey equipment to designated locations. They put on games and possible tournaments. This program would provide after school activities for youth between the ages of 13-16. He indicated that a coach is in place and that the Youth Advisory Committee believes that this is a great program. He said that the Youth Advisory Committee is looking at establishing a coed team. He submitted a letter that contained signatures of individuals who believe that this would be a good program for the City. It is his hope that the program will be put on by the Recreation and Community Services Division as well as the Youth Advisory Committee.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) Approved Council Co-Sponsorship of Youth Advisory Committee's Request to Submit a Grant to the Sharks in the Park Youth Street Hockey Program; and 2) Authorized the City Manager to Add the Sharks Organization Street Hockey Program as Additionally Insured through the City's Insurance.*

6. SUMMER THEATER ARTS REPERTORY (S.T.A.R). SUMMER PROGRAM CONTRACT

Council Member Sellers indicated that his wife is a long time teacher of this program and that his son has been participating in the program for the past few years. Therefore, he would be abstaining from this item.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 with Council Member Sellers abstaining, Authorized the City Manager to Execute a Contract in the Amount not to exceed \$25,000 for the Children's Drama Camp Entitled STAR (Summer Theater Art Repertory) Camp.*

City Council Action

CONSENT CALENDAR: (Continued)

10. SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT – Resolution Nos. 5674-5682

Mayor Kennedy indicated that he would recuse himself from acting on the resolutions relating to the Conte Garden zone and Mayor Pro Tempore Chang indicated that she would recuse herself from acting on the resolutions relating to the Sandalwood Estates zone as they reside within 500 feet from each of these areas.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution Numbers 5674, 5675, and 5676, Excluding the Conte Gardens and Sandalwood Estate Zones.*

Mayor Kennedy excused himself from the Council Chambers

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0, with Mayor Kennedy absent, **Adopted** Resolution Numbers 5677, 5678, and 5679, Referring Only to the Conte Gardens Zone.*

Mayor Kennedy resumed his seat on the dias.

Mayor Pro Tempore Chang excused herself from the Council Chambers.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution Numbers 5680, 5681, and 5682, Referring Only to the Sandalwood Estates Zone.*

Mayor Pro Tempore Chang resumed her seat on the dias.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** the City Clerk to Notice a Copy of the Resolutions.*

11. SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 4, 2003

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Tate abstaining, **Approved** the Minutes as written.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

12. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 4, 2003

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Tate abstaining, **Approved** the Minutes as written.*

City Council Action

PUBLIC HEARINGS:

13. ANNEXATION APPLICATION, ANX-03-01: HILL-GERA

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Tabled** Application ANX-03-01: Hill-Gera.*

14. EXTENSION OF TIME, EOT-03-06: McLAUGHLIN-JONES – Resolution No. 5673

Mayor Pro Tempore Chang indicated that her business office is located within 500 feet of this property. Therefore, she would recuse herself from this item. She excused herself from the Council Chambers.

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5673.*

Mayor Pro Tempore resumed her seat on the dias.

15. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-08: BERKSHIRE-SINGH – Ordinance No. 1622, New Series

Director of Community Development Bischoff presented the staff report.

Council Member Tate indicated that agenda items 14 and 15 are requests for six month extensions, and that there are two more requests to consider that are also requesting six month extension. He said that it was his understanding that the Planning Commission placed a condition on this application that states that it is their hope that this is the last request for an extension. He assumed that any time the City gives less than a year extension; the Council is implying that it is the last extension, otherwise, why would the Council not give them a full year extension. He felt that the City needs to discourage applicants from returning if only a six month extension is granted.

Council Member Carr felt that it should be generally known that the Council only grants one extension.

Council Member Tate felt that you need to understand the history of this application to understand that sometimes four extensions of time are necessary.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1622, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1622, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1568, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE-SINGH TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APN 764-23-054; DAA-00-08: BERKSHIRE - SINGH) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

16. DEVELOPMENT AGREEMENT AMENDMENT DAA-01-07: COCHRANE-MISSION RANCH – Ordinance No. 1623, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing.

Dick Oliver advised the Council that this request was filed in April when it looked like the Public Works Department would not be able to process the final map in time, the Building Department would not have the time to process the building permit, and that he would not have the time to

secure insurance for the project. He stated that due to the great work of city staff, the map recorded on May 6 and he pulled all permits on May 8. He was able to commence construction before June 30 on 16 homes. Therefore, the six month extension is no longer necessary.

City Attorney Leichter indicated that Mr. Oliver did not technically withdraw his application.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1623, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1623, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1535, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-21: MISSION VIEW-DIVIDEND HOMES TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APNs 728-32-001, 002, 003 & 728-33-001; DAA-01-07: Cochrane-Mission View) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

17. DEVELOPMENT AGREEMENT AMENDMENT DAA 02-01: CHURCH-SOUTH COUNTY HOUSING – Ordinance 1625, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1625, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1625, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1564, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-31: CHURCH – SOUTH COUNTY HOUSING TO ALLOW FOR A SIX MONTH EXTENSION OF TIME FOR 36 BUILDING ALLOTMENTS RECEIVED IN THE 2001 RDCS*

COMPETITION. (APN 817-02-002, 003, 004, 005, 022, 023 & 038) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Mayor Kennedy indicated that it would be his recommendation to consider agenda item 24 at this time followed by agenda item 18.

OTHER BUSINESS:

24. CONSIDER REVISION TO AUTO DEALERSHIP STRATEGY

City Manager Tewes presented the staff report and stated that in 2002, the Council adopted a strategy to try to encourage the attraction of auto dealers. At the Mayor's request, this item has been placed on the agenda for consideration of the strategy.

Mayor Kennedy indicated that Council Member Tate reviewed the video tape of the public hearing portion of the June 4 Council meeting. He indicated that last week, a LAFCO meeting was held in which the City of Morgan Hill requested the inclusion of 19.5 acres into the Urban Service Area. The 19.5 acres are general planned and designated as campus industrial. A presentation was made to the State LAFCO Commission of Santa Clara County. He stated that he made comments at the presentation that he would recommend to the Council that it delete the wording in the auto dealership strategy that talks about requesting that this parcel be annexed specifically for auto dealership purposes. He stated that there are two places that this appears in the auto dealership policy. The first can be found on the bottom of page 350 of the agenda packet. He recommended that the statement regarding annexation be deleted as well as area B of the map be deleted from the auto dealership strategy. This would be consistent with the comments he made to the LAFCO Commission.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin, representing Scott Lynch, owner of Bob Lynch Ford, stated that it seems that the proposal before the Council is stating to the residents of the area that it vows to fight the disease of an auto mall. However, should the Council approve the Ford project it would not fight the infection. Mr. Stump, the City's expert, confirmed that auto dealers look for proximity to other dealerships. He referred to page 101 of the auto dealers' sites and strategy and page 109 that prioritizes and ranks three key areas best suited for auto dealers at the Dunne Avenue area that is now being proposed for deletion. The Council indicates that the Dunne Avenue area is the premier site for automotive retail. Once an auto dealer commits to a site, the City would focus on attracting others to the area. He said that the deletion of the Mushroom farm as a potential site will eliminate the potential of doing this. He inquired whether it would be worth the impact to the quality of life that this one store will have to keep that portion of the strategy solely to gain the now rather paltry amount of sales tax revenue that this one dealership will produce for the City. He felt that this was not a well thought out strategy in what appears to be a desperate attempt to

save this one application. He did not believe that this was a good policy. He recommended that the Council rescind its auto dealership strategy, and disapprove the Ford dealership. He felt that preserving long term quality of life is more important than ruining it with this one application for an amount of sales tax revenue that would be nowhere near what the implementation of the whole strategy that the Council is now willing to retrench on.

Matt Lawson stated that he was in attendance at the LAFCO meeting. He said that one of the issues raised was that this area can be rezoned in just two years. It was his hope that one of the ploys was not to zone the property for campus industrial only to wait for someone else to come in and change the zoning to allow auto dealerships in the future. It was his hope that this was a sincere effort by the Council to uphold what was promised at the LAFCO meeting.

No further comments were offered.

Council Member Tate said that it was not his recollection that the Council put together an auto dealership strategy of 10 auto dealerships as stated in the Morgan Hill Times. The Morgan Hill Times also reported that Mayor Kennedy had gone in front of LAFCO. He said that the City would like to annex the mushroom farm as it would be beneficial to do so whether or not it is used for an auto dealership. He said that the Council was not talking about auto malls but talking about individual dealers. Mayor Kennedy informed LAFCO that he would try to convince the City Council to go along with his commitment not to place auto dealerships on this property. He stated that he would honor this commitment as this is a commitment that the Council had to make to annex the property. However, when you see what this does to the Council's strategy in terms of taking the annexation out and taking Area B out of the map, he did agree with Mr. Tichinin's conclusions. He recommended that the Council reexamine the auto dealership strategy with a new awareness and think about the whole strategy to make sure that the City has a strategy that will hold together. He indicated that the Council wanted a total of 3-4 dealerships in town and that they be grouped in proximity to each other. The Council felt that it had the best location in terms of auto dealership's preference on Dunne Avenue. The Council felt that it could do some grouping in this location and now it can't. He said that he would like to honor the commitment made by the Mayor to LAFCO as he understood the reason why it was made and that it should not be changed.

Mayor Kennedy stated that he has favored the Cochrane Road area for auto dealerships and that he also supported the auto dealership strategy. He felt that Mr. Tichinin raised some valid points and that it would be fairly easy to clean up the language to make the auto dealership strategy acceptable. He felt that the Council's actions were to support 3-4 auto dealerships in Morgan Hill. It was his personal belief that with the existing Chevrolet dealership and the Ford location at Condit and Dunne, this would leave plenty of opportunity for getting another 2-3 auto dealerships in other locations, not necessarily on Condit but perhaps on Dunne Avenue, adjacent to the Chevrolet dealership or at a site south of K-Mart. These areas would still be consistent with the first prioritization site. He felt that the statement that addresses concentration of attracting auto

dealerships on Dunne Avenue should be stricken to leave the strategy open ended. It was his belief that the rest of the language contained in the auto dealership would still work.

Council Member Tate stated that he would like to rethink through the entire strategy rather than tweaking it to make it work. He said that he has heard that auto dealers like proximity to each other. He said that it would be more appealing to have auto dealerships group rather than having them sited on four corners. He felt that the Council needs to walk through the entire auto dealership strategy again as he did not believe that it could just be tweaked.

Mayor Pro Tempore Chang concurred with the comments expressed by Council Member Tate. She stated her objection to the Dunne Avenue area for an auto dealership. She supported the use of the Tennant and Cochrane areas for 4-5 auto dealerships, if well planned. She recommended that the entire Dunne Avenue area be removed from the auto dealership strategy, inserting the Cochrane and Tennant area as the location to site auto dealership(s). She further recommended the deletion of Dunne Avenue as the number one ranking under area/site prioritization, deletion of reference to the Dunne area sites contained in paragraphs 1 and 2 under marketing, and the deletion of the annexation section.

Council Member Tate said that he would not support the elimination of the Dunne Avenue area as he would like to study alternatives and determine the importance of having auto dealerships in proximity.

Mayor Kennedy offered a compromise between the two positions. He supported deletion of the annexation paragraph with the understanding that the Council would revisit the remainder of the auto dealership strategy for a subsequent Council action.

Council Member Tate supported Mayor Kennedy's recommendation to revisit the auto dealership strategy in a workshop environment.

Mayor Pro Tempore Chang said that should the Council approve the Ford application this evening, there would only be one site left to locate an auto dealership. She noted that the marketing strategy is to target auto corporations to the Dunne Avenue site. She inquired whether this would mean that auto dealerships would be located somewhere else on Dunne Avenue.

Mayor Kennedy recommended adding the additional parcel adjacent to the K-mart site as a possible auto dealership site, but not this evening.

Council Member Sellers said that it would be easy to make the following modifications: Marketing – 1) eliminate the phrase “the Dunne Avenue sites” (paragraph 1); 2) amend paragraph 3 to read: “Once an auto dealer commits to a site, focus on attracting others to the area.” He did not know if the integrity of the strategy would be diminished if the Council does not specifically focus on Dunne Avenue. He said that reference was made to Los Gatos and stated that they have a lot more auto dealerships than he would ever approve. He noted that Los Gatos has strewn auto

dealerships through a residential area which is something different from what the Council is talking about. He noted that the Council would be including a buffer from the residential area. He noted that the Stevens Creek area also has auto dealerships strewn over a two mile radius. He noted that Bob Lynch Ford in Gilroy is located separate from a lot of the other dealers. He stated that every member on the Council is only interested in a few auto dealership sites in the community. He concurred with Council Member Tate that it would be wise for the Council to revisit the entire strategy with the consultant, staff and the community to make sure that the strategy remains sound. He recommended that the Council make clear to the community that it has no intent of allowing auto dealerships on the annexed land.

Mayor Pro Tempore Chang understood that the Council would be revisiting the auto dealership strategy but that she was having a hard time stating that Dunne Avenue is a prime area for automotive retail.

Council Member Carr noted that the Mayor Kennedy made suggestions to LAFCO and indicated that he would like to honor these suggestions. He felt that the Mayor and other Council members have offered suggestions this evening that would allow the Council to move off this issue and to get to the real issue before the Council with the understanding that the Council would come back and relook at the strategy. The Council would be taking the question of the 19-acres off the table. He supported elimination of the paragraph relating to annexation as it was a good suggestion.

Mayor Kennedy stated that the minutes would reflect that the Council intends to review the auto dealership strategy and that it may turn out that the Council will ultimately revise the wording. He recommended that this item be continued to July 2, 2003.

Council Member Carr noted that Council Member Tate recommended a workshop format. He inquired whether the Council wanted to commit to an earlier start time to accommodate a workshop.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) **Approved** the Mayor's Request to Revise the Auto Dealership Strategy to delete the annexation paragraph from the current strategy; and 2) **Directed** staff to schedule a workshop session on July 2, 2003 to revisit the strategy with some potential for updates and changes.*

PUBLIC HEARING

18 ZONING AMENDMENT APPLICATION, ZAA-98-16: CONDIT-HORIZON LAND (THE FORD STORE) (Continued from June 4, 2003) – Ordinance No. 1621, New Series

Mayor Kennedy opened the public hearing to give a parent with a small child the opportunity to address the Council at this time.

Sandy Fairband stated that she lives in the neighborhood several blocks north and away from the proposed Ford dealership and auto mall sites. She felt that her family's life will be directly impacted if the Council approves the auto mall this evening. No matter what promise the Council has made to the City Manager, the Council cannot guarantee that other auto dealerships would not follow as dealerships like to group together. She felt that allowing the auto mall to materialize at this location would jeopardize the safety of her family when they walk to Nordstrom Park. She expressed concern that the Council was not listening to the residents. She noted that many residents are voicing that this location, on Dunne Avenue, is not right for an auto dealership as this is a small and family oriented community. She said that it is the Council's job to hear and protect the citizens of the community. She noted that the Ford dealership is not the only auto dealership out there and that there may be others interested in negotiating a location with the City if they want to locate to Morgan Hill bad enough. She did not believe that the Council could control where test drives are taking place and expressed concern for the safety of the residents.

Planning Manager Rowe presented a power point presentation to address the public comment and to clarify some confusion of the location of the proposed auto dealership. He indicated that he included a response to Attorney Bruce Tichinin's comments as attachment B to the staff report. He indicated that a traffic trip generation comparison was prepared by Fehr and Peers Association for the proposed use. He addressed the site location/zoning and surrounding land uses. He indicated that the traffic consultant addressed some of the concerns raised relating to pedestrian safety and looked at some of the trip generations. He indicated that the proposed auto dealership would have the fewest number of trips to be generated and would have the least amount of impact to the street system. He said that the majority of the trips to and from the dealership would be accessed from Highway 101 (70%) from points north; and south from Dunne Avenue, west of Highway 101. He said that the dealership is required to identify prescribed test drive routes per insurance requirements. As a condition of approval, staff is recommending that that test drives be limited to Condit Road, Highway 101 and segments of East Dunne Avenue, Cochrane Road and Tennant Avenue that would require access to and from the freeway. Test driving of vehicles would be prohibited on Murphy and East Dunne Avenues, east of Condit Road and would require the accompanying of a sales person. With respect to enforceability, he said that the approval could be conditioned to prohibit test drives on Murphy and East Dunne Avenues as a requirement of the PUD. If there is a violation of these conditions, they would be subject to an enforcement action that could proceed to an enforcement hearing if there is not a remedy to the violation. This could eventually proceed to an action which would result in the dealership no longer being permitted to operate and the occupancy permit revoked. He said that the applicant needs to respond and state their commitment to adhere to the restriction of limiting test drives to prescribed routes.

Planning Manager Rowe addressed the concerns relating to noise and lighting. He said that the City's municipal code has commercial and industrial performance standards. The code has set 60 decibels as the maximum sound to be generated at the lot line adjacent to residential uses. He noted that there was an intervening residential area planned. Therefore, the sound generated from

the use cannot exceed the 60 decibel threshold. He noted that there is a condition in the zoning approval that would require that there not be an exterior public address system or other noise intrusive communication system. This would be a code requirement and would be subject to code enforcement action if violated. Regarding light and glare impacts, he said that there is a code requirement that requires all lighting in the PUD to be shielded and directed in such a manner as not to directly cast light from the boundaries of the site onto adjacent properties. He said that another condition in the PUD stipulates that the City would conduct a photometric study to verify compliance with code requirements. He noted that the subject property was annexed into the City over 30 years ago and that it is zoned commercial. Therefore, the automotive dealership is a permitted highway commercial use at this location.

Planning Manager Rowe summarized his comments as follows: the number of vehicle trips generated by the use would be fewer than any other use, including the uses that are presently approved to be developed on the site. Test driving of automobiles would be prohibited on Murphy and Dunne Avenues and would be limited to the prescribe routes. The City would be approving the prescribed routes. All impacts associated with the proposed use would be reduced to a less than significant level because of the mitigation measures or code requirements. Therefore, based on the fact that all environmental impacts would be reduced to a less than significant level, the project approval would not require the preparation of an Environmental Impact Report.

Council Member Tate noted that Council Member Sellers talked about Los Gatos as a community that has a number of automobile dealerships that are approximate to residents. He inquired whether staff checked with Los Gatos on any of their safety records in terms of accidents. He inquired whether Los Gatos has prescribed test drive routes.

Planning Manager Rowe said that during the interval time staff had to prepare for this evening's meeting, staff was only able to look at the City's local experience. Staff found that the local Chevrolet dealership was the same as this use as far as the prescribed routes. He stated that test drives would be limited to Condit Road, Highway 101, segments of East Dunne, Cochrane and Tennant which are necessary to access the site to and from the freeway. He said that staff reviewed the auto dealership strategy. The strategy looked at six geographical areas that were potential locations for dealerships. Staff did not see, within the strategy, a commitment to approve a dealership in any specific location. He said that the 19+ acres to the north of this site as well as the parcel to the south of the former K-mart store have general plan designations that would not permit auto dealership uses. Therefore, staff concluded that it would be speculative that the approval of one dealership at this location would trigger the approval of more than one dealership at other locations such that it would warrant the need to look at producing a cumulative impact sense under an EIR. Should a dealership apply to locate south of the K-mart store, the impacts would be evaluated as part of the application to amend the general plan and zoning on that site.

Mayor Pro Tempore Chang inquired why this site and the adjacent 19+ acre site would not be considered a cumulative affect.

Planning Manager Rowe noted that the area to the north is general planned office industrial. He stated that LAFCO approved the City's expansion of the urban service area last Wednesday only on the basis that this land would develop under the office industrial designation and not for other uses. He noted that the existing PUD has enough land area to support one dealership. He said that in order to study the cumulative affect of this site and the proposed annexation of the 19+ acres to the north would require a change in the land designation. He said that development, as proposed, would be consistent with the adopted PUD plan. Staff did not see this as being reasonably foreseeable and is considered undue speculation.

Mayor Pro Tempore Chang said that at the time the Christian College came before the Council, Christian College representatives talked about an expansion. At that time, the City requested that they perform a full environmental impact report (EIR) based on future promises. She requested an explanation as to the differences between this case and the Christian College case.

Planning Manager Rowe said that the Christian College site was one parcel of approximately 30 acres which they proposed to acquire for a specific purpose. The Christian College included detailed information in the initial application and in newsletters/other documents that they described as their vision for future uses. He noted that they were very precise as far as the planned build out of the entire single site. In this case, the City is talking about different properties that are not under the control of this applicant. Therefore, staff did not see the same correlation between the two because the City is dealing with distinctly different properties.

City Attorney Leichter said that one of the critical differences between this situation and the Christian College situation is not only that the one parcel was under the control of one applicant that had precise plans as stated, but the Council is talking about a governmental action in this case in terms of an auto dealership strategy and economic development. She stated that this is very different in terms of the CEQA analysis of what is reasonably foreseeable in an applicant's plans for one parcel which it controls. This is the reason why staff does not believe that this is reasonably foreseeable and therefore an EIR is not required.

Council Member Sellers noted that the Council technically closed the public hearing last week. He requested clarification whether the Council needs to formally reopen the public hearing in order to receive public testimony. He noted that there were several individuals who want to hear the proceedings. He inquired whether the Mayor would be making recommendations about the procedures this evening, noting that the Council has heard a lot of testimony at prior Council meetings and through e-mails and conversations via telephone calls.

Mayor Kennedy proposed that the Council reopen the public hearing, hear from the applicant, Mr. Tichinin and the other speakers who submitted cards. The Council would then close the public hearing and then enter into Council discussion/action.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Process Consultant, said that project proponents would like to address some of the issues. He indicated that Ford has assembled representatives to speak on behalf of the applicant. He noted that four individuals were in attendance to address the Council: Sean Absure, representing the Ford Store; Ted Mengiste, representing the Ford Motor Company; Craig Ahlstrom, partner/owner of this particular of this particular dealership; and John Telfer, representing Horizon Land, the current owner that is selling the property to the applicant.

Sean Absher, partner share holder at Stradling, Yocca, Carlson, and Rauth, stated that he sees his purpose this evening as weighing in on the legal issues raised by Mr. Lynch, owner of Bob Lynch Ford, through his attorney Bruce Tichinin. He addressed the letter sent by Mr. Tichinin to the Council dated June 4. He stated that he was also handed a letter this evening by Mr. Tichinin dated June 18. He stated that Mr. Lynch is a resident of Gilroy with an operation of a Ford dealership in Gilroy. He said that the case he cited in the letter establishes clearly that Mr. Lynch does not have the standing to make the legal arguments that are being made this evening. He felt that Mr. Lynch can only have a standing under one of two theories: 1) that Mr. Lynch has a beneficial interest. He said that in order to have a beneficial interest, Mr. Lynch and his business needs to be directly impacted by the zoning amendment application before the Council. 2) Mr. Lynch does not fall under the regular standing that any citizen has to further a public interest. In order for a person to make an argument who is not beneficially interested, the individual would have to demonstrate that they have had and continue to have a significant interest in furthering environmental interests. This would typically be done by public interest groups that act consistently throughout counties, state and public government, furthering environmental causes. He noted that Mr. Lynch is not an individual who has demonstrated in the past an interest of furthering environmental concerns. He could understand why Mr. Lynch is interested in these proceedings, but that he did not have the standing to make legal arguments. He did not believe that the arguments were well made, but that Mr. Tichinin's letter presented to him this evening requests that the Council continue the hearing for two weeks. He requested that the Council not grant the requested continuance, as it was his belief that staff had done a thorough and complete job in its presentation.

Mr. Absher addressed the substantive legal issues raised by Mr. Lynch. He said that Mr. Lynch, through his attorney, states that the Council and staff have not made findings significant to identify substantial property rights as referred to in the June 4 letter, page 6, item 2. He said that the fundamental problem with the argument is that Mr. Lynch relies on the Topanga case. He stated that the Topanga case dealt with a use variance. The applicant wanted a variance to change the use of a property. Under California law, you can no longer use a variance to change the use of a property. He said that the Topanga case has nothing to do with what is before the Council this evening. With respect to the argument made under heading 2 relating to the substantial property rights, he stated that this talks about a legal concept that does not apply in this case, a use variance. He indicated that a use variance is no longer allowed. What is before the Council is an amendment to a zoning ordinance that essentially rezones the property, and is not considered a use variance. He read the Orinda Homes Committee Case into the record that he considered as being precisely the same setting before the Council. The case dealt with homeowners seeking to

invalidate a rezoning ordinance that dealt with a planned unit development. This was a situation where a developer wanted to go in and change the zoning classification within a PUD, similar to what is before the Council. The concept of changing the PUD to allow for a different type of use or different characteristics/features is a zoning application and not a variance. The Court stipulated that in acting on the zoning ordinance, the Board of Supervisors performed a legislative function. The Council has a situation where it is considering an amendment to the zoning ordinance that effectively rezones the property. This is why the proceeding before the Council is an ordinance and not a variance request. This being the case, the application of the variance standards does not apply in this case. He referred to Mr. Tichinin's letter, heading 3 that states that failure to grant the exceptions would prevent the dealership from being profitable, citing the Topanga Case. He noted that this case dealt with a use variance and that is not what is before the Council this evening. What is before the Council is an amendment to a zoning ordinance that is being accomplished through a rezoning, a legislative action. The Council's action would be under a different set of rules and not evaluated under 1094.5 of the Code of Civil procedures as referred to by Mr. Tichinin. He stated that this Code section applies to administrative acts and does not apply to legislative actions on the part of the Council. From a land use, legal perspective, he did not believe that Mr. Lynch has a standing to make the arguments. He felt that the Council had ample findings and ample facts to support granting the application.

Ted Mengiste indicated that he is the market representative for Ford Motor Company of Northern California. He stated that for the past 8 years, Ford has monitored the Morgan Hill market and identified a place where it would like to do business. Once this determination is made, Ford looks for a dealer candidate that would represent them well in Morgan Hill or any given community. He said that a Ford dealer operator has to fit the four Cs: Credit, character, capacity, and customer satisfaction. He said that the Ford operator in San Leandro has demonstrated these well over the years and that the Ford dealership is in full support of the operator. He felt that Ford Motor Company is within its right to locate an auto dealership in Morgan Hill.

Council Member Tate inquired as to the importance of the proximity adjacent to other auto dealerships.

Mr. Mengiste responded that the Ford Motor Company has dealerships that operate in both (proximity and non-proximity to other dealerships). He said that it is beneficial if other dealers are within close proximity, but that it is not essential as a deal breaker.

Craig Ahlstrom stated that Ford Motor Company is here to be a good neighbor. He said that he intends to reside in this community, and that he would want the test drive routes to be safe. He said that in San Leandro, employees have to follow a test drive route and that it is enforced. He proposes to use Highway 101 and Condit Road south to Tennant Road and Condit Road west on Dunne and returning to the site as the designated test drive routes. He did not believe that test drives should occur in any residential areas. He stated that he is currently working with City staff in the development of a photometric system/study to determine the effects of the proposed lighting. He noted that city staff has already determined that auto sales will not produce heavy

traffic, indicating that autos will be delivered between 9 a.m. and 4 p.m. He anticipates accommodating all employee and customer parking on site.

Council Member Sellers stated that he did not want to see test drives on Condit, north of the dealership or south of Dunne Avenue.

Bruce Tichinin said that in the case that Mr. Absher cites, he may be right that his client may not be able to challenge these in court. He stated that this seems to be inconsistent with what he knows or his sense, in general, of law on the topic. He said that he could not rebut the comments this evening. He stated that he would like the opportunity of a continuance to study the matter. He said that this can be gotten around by residents suing and raising issues. He did not want Mr. Absher to create an impression on the Council that the arguments he is raising cannot be raised in court successfully. He felt that Mr. Absher misunderstood the thrust of his arguments about the variance. He agreed that these are legislative acts. His arguments about variances go to the request for the six exceptions from the city-wide PUD standards. He did not believe that granting these exceptions were a part of the rezoning, but created exceptions from the legislation. To create exceptions from a law that the Council is not amending is not a legislative act but a judicial act. He said that the variance statute and the City's exception ordinance set the standards that the Council has to meet in order to grant exceptions and variances. He said that there is no evidence to support any of the findings before the Council; and, therefore, he did not believe that the Council could grant the exceptions. He noted that the staff report indicates that Mr. Absher was going to point out that one of the things that the Council has to find in order to grant any one of the six exceptions is that it finds that the exceptions are necessary to preserve a substantial property right of the applicant. The staff report states that Mr. Absher was going to address this issue and did not believe that he has done so.

Mr. Tichinin referred to Planning Manager Rowe's power point presentation. He noted that staff indicates that meeting city standards regarding noise will assure that there is no potential for significant noise impact from this project. He did not believe that there were noise mitigation measures proposed for the project. There is nothing showing as to what the existing base line situation is in this area with respect to noise or what the factual impact of this project will be on the noise level in the vicinity. Staff cites that the applicant would be required to comply with the 60 dba standards for residential areas, noting that there is land zoned residential across the street. In taking a look at the City's general plan noise contour map, he did not believe that it corresponds to staff's testimony that the 60 dba standard can be met because it shows a 65 dba level in the noise contour in the Condit Road area. He submitted his June 18 letter and incorporated it in its entirety for the record. He felt that this project violates the noise element of the general plan because the procedure required by the Noise Element for assessing noise impacts of projects has not been followed so as to assure that they do not have the potential to create a significant noise impact on the environment. He read from the policy as listed in pages 104 and 108, section 7b of the City's general plan. He felt that the City should conduct significant factual evaluation such as the preparation of a noise study of the potential noise impact of a project. He said that the Council has received adverse responses to the proposed project. He said that one of

the sources of interior noise in this project will be what happens in the repair bays. He felt that there would be a cacophony of noise coming from the repair bays and that there is no consideration of the noise source anywhere in the record in connection with this project. He noted that the initial study admits that there will be increases in noise levels from the project with the principal source coming from vehicular traffic. He said that General Plan Policy 7c states that noise level increases resulting from traffic associated with new projects shall be considered if the noise level increases 3 dba or greater with a future noise level of 60 dbas or greater. He did not believe that an attempt has been made to find whether it will be the 3 dbas. He referred to Policy 7f that states that noise levels produced by stationary noise sources associated with new projects shall be considered significant if they substantially exceed ambient noise levels. He did not believe that data has been gathered to determine whether or not this policy applies. It was his hope that the Council had an opportunity to read his letter before making a decision. A new issue raised is the issue of the loss of agricultural land both from a cumulative impact stand point and from the loss of the 8 acres involved which are acknowledged as prime farm lands. The failure to treat this results in the project having a significant effect on the environment on these counts as well. He felt that these go to the need of preparing an EIR because the mitigated negative declaration is not supported by the evidence. It was his hope that the Council denies the project as it was his belief that the law requires it and that the community is also requesting its denial. The Council is placing the situation such that this project would be isolated from the auto dealership strategy. He did not believe that the Council can expect the use to produce more than \$100,000 per year in revenue to the City. It will set in motion a loss of quality of life in Morgan Hill where it will be permanent and precedent setting, impossible to reverse. He felt that the detriment will greatly out way the \$100,000 per year in revenue that can be expected. He said that the City's provision does not provide for a basis for the variance to be tied to the characteristics of the property.

City Attorney Leichter indicated that it was the Cruik Case versus the County Santa Clara which states that a variance does not have to be tied to the physical characteristics of the property. She stated that she was trying to understand Mr. Tichinin's argument on the variance and how it fits in the actual text of the PUD ordinance. It was her belief that Mr. Tichinin explained his position on this issue.

Deborah Sparacino stated that she sent e-mails to the City Council addressing her safety concerns. She read a letter from a neighbor, Ron Watson, a police sergeant for 13 years, who requested that she present it to the Council. He understands the need to promote business and the tax dollars they bring as they pay his salary and allow him to provide a service to the community. He agreed with many of the concerns raised by his fellow residents. He states that the Council's decision will affect this community forever and that it cannot underestimate the safety risk of placing one or more dealerships in close proximity to an elementary school and a park. He said that pedestrian traffic associated with these locations presents a greater risk to the community. He felt that test drives are an inherently dangerous proposition. It only takes one catastrophic test drive and it will be remembered for life. He felt that Condit, at Dunne, is not the best location for the Ford dealership. He supports additional auto dealerships in Morgan Hill, at the right location. He felt

that it is reasonable to expect sound decisions when it comes to community development and the safety of children. It may not be in the City's best interest to offer Ford greater incentives and that it may be better to locate them at an anchor store, in a more appropriate location, building the location into a greater tax base.

Karen Bainbridge deferred her time to Michael Lawson.

Michael Lawson requested that everyone look at the reasons that the proposed dealership is wrong for the community. He noted that the proposed dealership would be located near a school, park, the soccer field, the aquatics center and local residences. He felt that test drives are inherently unsafe and that children cross four lanes of Dunne twice a day to go to school at Nordstrom. Children also walk along Murphy and Dunne Avenues on their way to school. The residents have also raised concern about traffic, lighting and chemical pollution. He noted that six exemptions to the PUD are being requested for this dealership and felt that this demonstrates the proposed dealership is in the wrong area. He wrote the Council about the fact that no setback has been required of this applicant to allow Condit to be expanded to four lanes. This lack of setback may force Murphy to be expanded to four lanes instead of Condit. Doing so would jeopardize the public's comments on this matter. He requested that all proposed businesses, including this one, that are to be developed along Condit Road, be mandated to have the required setback to allow Condit to become four lanes instead of Murphy Avenue. He also sent the Council an e-mail regarding the lack of a noise study for the proposed Ford store. He noted that the City's zoning plan shows residential development 66-feet across the street from the proposed Ford store. He did not believe that it would be likely that the limit of 60dba can be met. The lack of a noise study and the lack of required setbacks along Condit Road clearly demonstrates that this application and the site have not been planned properly by the applicant. If the Council agrees with any of the concerns that he has raised, it would have to vote no on the proposal. He did not believe that anyone would doubt the Council's integrity if it votes for the safety and well being of the residents of the community.

Bob Bainbridge indicated that he is a resident of Kelly Park and the president of the homeowners association. He did not believe that the Ford dealership belongs in the PUD development on Condit Road. He said that the Ford dealership will have a direct impact on safety of students attending Nordstrom School as well as the people who play at Nordstrom Park. He displayed pictures of a typical day of cars parked along Murphy Avenue. He said that this is not an area where residents want people to test drive cars. He felt that the Chevrolet dealership across Highway 101 violates noise, lighting, public announcement systems and test drive routes on a regular basis. He expressed concern with the impact of the Ford dealership on the land located across the street that is zoned R-2. He noted that the Chevrolet dealership was incorrectly using the land behind them to store vehicles. He was not sure how the City would be able to enforce the issues associated with the Ford dealership when it cannot even enforce the violations associated with the Chevy dealership. He said that the Ford dealership will make it harder to get the R-2 land developed. He felt that the Council needs to preserve and provide safety for the residents of the community. He requested that the location of the Ford dealership be moved elsewhere.

Bob Burkhardt addressed the urban service area amendment, noting that it added 57 acres, 19 of which were adjacent to the proposed Ford store. He felt that it was a long term City Council strategy to attract car dealerships and create an auto district within the City of Morgan Hill. He indicated that the annexation was approved by LAFCO on June 11. He did not have a fundamental issue in having an auto district in Morgan Hill. However, the Council has picked the most populated intersection of Highway 101 at Dunne Avenue to achieve this plan. He indicated that a majority of the residential community east of Highway 101 must travel the Dunne corridor to reach the Highway. He did not believe that Cochrane or Tennant have the same level of congestion or impact. He noted that the City Council is currently reviewing one Ford dealership in the area. However, in previous meetings, the Council reviewed and discussed auto malls, auto districts and various sites to be planned similar to auto malls found in Los Gatos, San Francisco, Fremont, San Jose, Gilroy, Seaside, and Salinas. He noted that none of these cities have individual dealers by themselves as they are all in auto malls. Even if the Council changed the auto dealership strategy, he felt that it could still be amended later. He felt that it was important to ensure that the public is informed of government plans and that the appropriate evaluations and comprehensive impact reports are completed on the potential impacts of multiple dealerships in this area. He requested that the City prepare a cumulative EIR for the auto dealership in association with the other 18 businesses located in the Condit/Dunne area. He recommended that the Ford decision be postponed until the Council adopts a final auto dealership strategy and that everyone understands whether Condit or Murphy will be a four lane road as this would significantly impact the overall environment of the area.

Mark Spacacino said that his primary objection to the Ford site is that it would be the second auto dealership in the Dunne Avenue area. Approval would almost guarantee a third and fourth auto dealership in the future. He understood that staff presented a traffic trip analysis and that it calculates to approximately 9,000 trips per week per dealership. This results in the addition of 35,000-40,000 trips a year associated with the Ford dealership. He felt that the trip generation information presented appears to be low. He felt that any development would impact traffic. If it is a restaurant, it would be a benefit to the citizens of Morgan Hill. He recommended that development of Dunne Avenue be one that benefits the community. He felt that the Ford store would be a valuable addition to Morgan Hill, but suggested that the Council find another location where the City would have a dedicated auto community which would be in the City's best interest.

Teresa Lawson requested that the Council vote no on the proposed Ford store at the Dunne Avenue/Highway 101 location. She read from a prepared statement, indicating that the proposed Ford store would have far reaching implications for the local community. She stated that this area of Morgan Hill has a large residential population, many of whom moved to Morgan Hill to leave the traffic and congestion of larger cities behind for a rural community. She noted that what the community has in this location is an ever growing presence of fast food restaurants, motels and now a proposed auto dealership or soon to be auto mall. The open field and live oaks that used to dot this area are now a memory being replaced by a growing business district around the corner

where she lives. She felt that the Council selected the Dunne/Highway 101 site with the reasoning that the area already has a parking lot and seas of cars from large businesses. She did not believe that this meant that further destruction of the town's rural integrity at this location is acceptable. She noted that the Council has heard the residents' concerns of light/noise pollution, increased traffic, test drives in the neighborhood that will be next to impossible to enforce. Also, safety issues with an elementary school and a park close by is of concern. She requested that the Council consider relocating the Ford business, as the decision that it makes this evening will have long term effects on the lives of those who reside in Morgan Hill.

Nilou Tarani, Kelley Park resident, stated that it was disturbing to know that her family and her neighbors' quality of life will be dependent on the decision that the Council will be making on the Ford dealership, and consequently, the impact on the decision on Murphy Avenue becoming four lanes. She moved to Morgan Hill last year and stated that had she known that an auto dealership was being proposed, she would not have moved to this location. She shared the concerns of other residents relating to noise and pollution. She noted that Council Member Tate disagreed with the relocation of the Ford dealership, and suggested that the Council revisit the auto mall strategy. Council Member Tate also mentioned a "new awareness." It was her hope that each Council Member is aware of the direct impact associated with the decision it will make on the quality of life for the Murphy/East Dunne Avenue area. Also of concern is the devaluation of property values. She urged the Council to vote no on the Ford dealership.

Mat Fairband felt that great arguments were presented this evening. He stated that he would leave the legal issues to the attorneys. Should the Council vote yes on the Ford store tonight at this location, it would impact the lifestyles. Rather than ending up with an identifiable area of auto dealerships, the City will have a dappling of auto dealerships in the community. He requested that the Council defer its decision on this issue and that the Council put together an auto dealership strategy; identifying locations for dealerships in areas that have lower impacts on residents.

Sunday Minnich, Executive Director of Chamber of Commerce, stated the Chamber's support of the auto dealership at the Dunne location. She noted that the land has been zoned commercial for over 30-years. If an auto dealership does not locate on the site, another commercial use would go in, perhaps with greater impacts. If the auto dealership goes to Cochrane or Tennant, those residents will be in this room. She felt that the Highway 101/Dunne location is a great location for an auto dealership as it has great visibility. She felt that Morgan Hill needs to look at the future, indicating that the future shows that the City needs to increase its sales tax revenue to support fire, police and emergency services and the quality of life. She stated that sales taxes pay for the great quality of life. The only other alternative would be to increase property taxes, resulting in citizens being in this room again. She said that the Council understands that it will need to raise sales tax or raise property taxes. By allowing the dealership to locate at Dunne/Highway 101, it will not only bring in sales taxes from the new dealership but will enhance the tax revenue that we already receive from the Chevrolet dealership by locating them in proximity to each other. She said that the residents near the Chevrolet dealership expressed similar concerns as are being

expressed by the residents this evening. The residents were given assurances six years ago when the Chevrolet dealership moved into Morgan Hill. She said that these assurances have been kept, as the Chevrolet dealership has not received a complaint since moving into their location. She indicated that auto dealerships are great supporters of the community and give back in other ways as well. She felt that the Council made careful concessions to make sure that the concerns of the residents were addressed with the Chevrolet dealership; and that it was her belief the Council will make the same concessions at the Highway 101/Dunne site. She felt that many individuals moved to Morgan Hill for its quality of life, and that the quality of life can be attributed to the Council's ability to make the right decisions.

Marby Lee found it ironic that the Council was so concerned about a gateway to Morgan Hill that it nearly turned away an In and Out Burgers but somehow finds a Ford dealership more appealing. She also found it ironic that the Council has addressed a possible child molester coming into town with the issue of safety of children, and yet are willing to place a use that is dangerous not less than a mile from an elementary school and park. She said that it is already difficult for people to get in and out of existing businesses. She felt that traffic would be impacted by the auto dealership. She said that it was brought up that the Council had decided on an auto dealership strategy 1.5 years ago. It has been raised that if the Ford dealership is not be allowed in the PUD, a use with a higher traffic flow would go in. She recommended that the land be left open, as it was her belief that things have changed and that the area needs to be reevaluated because of the traffic and for the reasons already stated. She urged the Council to vote no on this issue.

Sharon Miller, 1205 Kelly Park Circle, noted that the traffic is backed up on Condit up to the overpass trying to turn left on Condit. What will occur is that individuals will go down to Murphy and make u-turns. Traffic cannot access the fast food restaurants because the area roads are congested. She did not understand why Murphy would be widened to four lanes if there are to be no test drives on Murphy. She felt that it should be Condit Road that is widened to four lanes. She stated that she was disappointed with the comments made toward Council Member Chang, and requested that an apology be extended to her this evening.

Tom Timmermen stated that he moved to Morgan Hill a couple of years ago as it is a wonderful community of people in a residential neighborhood with stores that support the general atmosphere of Morgan Hill. He does not see the dealership being for the residents as much as it is to attract people off the corridor heading north to San Jose or south to Gilroy. He hopes that the Council will invest its time and effort in this area and take action that will benefit the residents of Morgan Hill.

No further comments being offered, the public hearing was closed.

Mayor Kennedy said that what he heard Mayor Pro Tempore Chang state was the Council approving a policy that would support 300-400 acres of land for auto dealerships.

Mayor Pro Tempore Chang recollected that she stated that the policy would support 30-40 acres of land for an auto dealership.

Mayor Kennedy stated that he met with some of the neighbors as well as Officer Watson. Contrary to the comment made earlier, he said that he takes pride in listening to the community. However, it does not always means that he agrees with everyone. He said that he is very conscience about the safety and well being of the community residents, especially the children. He said that this is a difficult decision and that he has to look at what is best for the entire community. He stated that some of the most important services the City has to offer are police protection and fire service. He indicated that he was Mayor of the City when it had to lay off 1/3 of the fire department and almost ½ of the police department. He vowed at that time that he would not go through that again. He learned that the City needs economic growth and development to have a healthy community. If the City continues to turn away businesses, the City will develop a reputation for being opposed to businesses and being business unfriendly. Years ago, the City had this reputation and that he has worked hard for many years to restore the good name of Morgan Hill. The City is open for business and values good businesses coming into the community. With respect to this specific project, as he looks at the issues that have been raised relating to lighting, noise and traffic safety, he does not see these issues that have been raised. To assume that Murphy Avenue will become an arterial is a false assumption, as there is no connection between this specific approval and the study that relates to traffic on Murphy Avenue. He indicated that the Council will hold a joint public workshop with the Planning Commission to talk about the traffic study for Murphy. He said that he has opposed widening Murphy Avenue as a main arterial, and that he does not support Murphy becoming a north/south arterial. He stated that the worst noise coming from this area is coming from the freeway, and that this project will build a barrier that will affectively reduce freeway noise from the neighborhood. The city has commitments with respect to lighting control and the photometric study and routing of the traffic for test drives. The Ford dealership will require their employees to sign agreements with respect to where they will be allowed to drive. He stated his support of this proposal because it was his belief that it would benefit the entire community. He indicated that he resides off East Dunne Avenue, travels this road a daily basis and knows what the traffic is like.

Council Member Sellers indicated that the Council has tremendous respect for each other. He probably jumped to conclusions at the last meeting because he felt that he was being questioned as to his truthfulness and his feelings on an issue that is very controversial. He said that Mayor Pro Tempore Chang has been on the Council much longer than he has. Therefore she knows the issues and that he has respect for her. He felt that the Council was wrong to question each other's veracity. He said that individuals have indicated that Mayor Pro Tempore Chang owns property on Tennant or Condit and that this might influence her decision. He found these kinds of comments to be offensive. He said that he has far too much respect for her as an individual to think that she is doing anything other than what she feels is right. He also has a lot of respect for the other Council Members.

Council Member Sellers felt that each Council Member is a neighborhood advocate. He wanted to make sure that all of the neighborhood issues and concerns were addressed noting the following: 1) the City will be conducting its own independent lighting analysis. If the user does not comply with the recommendations, they will not be allowed to operate. 2) the City needs to identify a minimum height for plants on the freeway and Condit sides. They need to be high for visual impact and to help with the other issues (e.g., reduce noise levels from the freeway. 3) Limit the flag pole height to 30 feet. He felt that the nation's emblem needs to be held high and not be allowed to be used as garish sales tool. 4) He could not see that the test drives could be conducted on Murphy or anywhere near residential areas. It is not allowed for insurance purposes, and the sales persons will not be allowed to use Murphy or residential streets. If an issue comes up, and residents cannot get satisfaction from the Police Department, he requested that the residents contact him or any other council members and that the concern would be investigated. 5) Prohibiting test drives south of Dunne on Condit Road or north of the dealership. 6) He noted that part of the project that is being overlooked is that there is a remaining pad for a restaurant. He said that 90% of the businesses will not locate in Morgan Hill for the very reason that everyone talks about, this is a small town. He said that he would do everything that he could to help identify appropriate businesses for the PUD.

Council Member Sellers noted that the property has been zoned commercial for several years and that it will develop in the next few years. He felt that it made sense to place the lowest possible traffic use in the PUD. He stated that he resides across the street from an auto repair shop, indicating that he does not hear the use in the neighborhood. He said that this Council is making a strong statement by limiting the number of auto dealerships in this area and by not allowing land to be annexed for this purpose. The Council cannot legally tie the hands of future Councils. However, this Council can state that it feels strongly that this is the right way to go. Therefore, any future Council members have to be diligent to make sure that it does not change again. He stated that he does not support making Murphy Avenue an arterial, and that a study has been undertaken in an attempt to address the concerns of the neighborhood. If the concerns are met, he recommended that the Council support the zoning amendment. If the concerns are not met, he would not support the application. He felt that the City has set high standards for this use.

Council Member Tate indicated that he viewed the video from last week. He found two things that struck him this evening. The first is a deep concern on the part of the neighbors of the operation that is going in the PUD and its safety. The second thing that struck him was that the only statistic or fact that came up is one antidotal example from a police officer of a death that occurred. He did not hear one single statistic about the safety of auto dealerships. He was trying to rationalize the safety concern expressed, but the facts have not been presented to substantiate the concerns, with the exception of the one antidotal example. He stated that he has supported the Council's auto dealership strategy, including the annexation of the property to the north which he felt was going to give the City the proximity of a couple of dealerships in the area. He noted that the strategy was changed this evening, a concern to him about piece mealism. He was not sure whether the Ford dealership was still interested in locating on Condit with a proposed auto dealership strategy or whether they want to wait to see what the strategy turns out to be. He

understood that there were a lot of issues raised at the previous meeting about the viability of two Ford dealerships. He noted that the Ford dealership still wants to locate within the PUD and that the other Ford dealership is fighting it. He felt that competition is healthy. He felt that Morgan Hill could win the competitive battle. He stated his support of Ford locating in the PUD. He said that he has not been convinced by the argument of safety, even though the neighbors believe that a traffic safety concern exists. He would like to study the concern about noise a little more, as it is a concern. He felt that the Council has addressed the lighting issue. He inquired whether the Council should discuss the auto dealership strategy before finalizing this decision, and whether the City could partner with Ford on what can be done with the strategy.

Council Member Carr inquired how noise would be evaluated and how is it determined whether it was insignificant enough.

Planning Manager Rowe noted that Highway 101 is behind the Ford dealership and is a single noise generator in the community. He indicated that the ambient noise conditions were looked at as part of the General Plan update. The General Plan's noise contour map looked at future conditions such as increased traffic volumes on Highway 101 and other noise sources. He said that the General Plan update looked at the freeway, noting that a noise analysis was performed as part of this update, and that the policies that were placed in the General plan were in response to how the City would mitigate impacts from the noise sources in conjunction with future development of the area. The argument that staff put forth in terms of the performance standards having 60 decibels at the property line refers to the use itself. In order to achieve the reduction from the noise contour maps referred to by Mr. Tichinin would require that this dealership mitigate the freeway noise. He felt that it would be excessive to require this use to install some type of noise attenuation to bring the background noise conditions to a level that would meet the standards referred to. It was staff's belief that the performance standards contained in the codes are sufficient to mitigate noise, given the ambient conditions that exist and with the major noise being generated from the freeway. He noted that the background conditions will not be exceeded. Staff believes that adherence to performance standards will be sufficient to find that the noise impacts would be less than significant. With respect to the future residential development that will occur to the east, the background noise conditions will have to be assessed and there will be noise mitigations that will be incorporated into this development such as sound walls or other noise attenuation measures to ensure that the rear yard environment and the interior environment of the future dwellings are in accordance with the City's adopted general plan standards.

Council Member Sellers inquired which landscape screen height would be appropriate based on the type of landscape material to be planted, and to be consistent with what was required for other similar facilities.

Planning Manager Rowe responded that staff looked at plantings as a way to provide a visual screening of parking areas and that landscaping is typically three feet in height. He stated that the PUD guidelines could include a three foot minimum height landscaping requirement, including the comment on the flag pole height and the test drives.

Mayor Kennedy inquired whether there will be any vegetation buffering the vehicle parking area and the sidewalk for noise attenuation to be included.

Planning Manager Rowe said that the Council is only dealing with the zoning amendment application this evening as opposed to the details of the site development. He indicated that the Council can request that the Architectural Review Board (ARB), when evaluating the landscape plan or the physical treatment of the 30 foot areas, take into account the concerns raised about noise impact. He informed the Council that the City has required projects within the 30 foot area to install berming in lieu of shrub planting. He felt that the combination of the landscaping and the berm are affective ways to mitigate noise issues as well as providing for the visual screening that is desired.

Mayor Kennedy requested that the ARB evaluate the landscape plan should the zoning application move forward.

Council Member Carr requested that staff address the setback on Condit Road issue that was raised.

Mayor Kennedy said that he spoke with Mr. Lawson, and the comment was that Condit could be expanded to four lanes. This would require a greater setback to the east side of the street. Because of the way the layout is set up, the setback is not as far to the west.

Mayor Pro Tempore Chang said that for two years she held her position on the use. She stated that she did not believe that this was a good location for an auto dealership. She said that she would not support the use this evening or in the future. She said that this has been a difficult process, and that there may have been some misunderstandings. She clarified that she has not developed land, nor helped others develop; and that she does not own a piece of land in Morgan Hill or anywhere else. If the City does not have a proper auto dealership strategy, siting the auto dealerships in the right place and designed/planned properly, the City will be getting an auto dealership at the expense of the City's rural atmosphere. It was her belief that relocating the Ford dealership will still result in receiving revenue, but that it would take time to do so.

Action: *Mayor Pro Tempore Chang made a motion to **deny** the Ford dealership application. The motion died for the lack of a second.*

Council Member Tate said that when the Council developed the strategy, he was of the opinion that auto malls were out of the picture, and that none of the auto dealers would be going into a mall situation. It was his belief that the Council only wanted individual dealerships.

Council Member Sellers said that he read in a summation page that he commented that he wanted an auto district strategy. He reviewed the notes and noted that he stated auto dealer. He noted that the term mall, district and dealers are used interchangeably. He did not believe that the

Council wants to see a mall or large auto district. He does not want to be Los Gatos, as they have too many auto dealers. He felt that the Council has gotten more unified in feeling that this is in fact the case.

Council Member Carr commended everyone for talking about the issues this evening. He noted that the Council represents approximately 35,000 citizens in Morgan Hill and that they live in neighborhoods throughout the community. He stated that the Council is being asked to approve six exemptions to city-wide PUD standards this evening. The Council has heard the pro and con arguments about whether they are acceptable exceptions to the city-wide standards. He felt that all exceptions make sense and that there is precedent to each one of the exceptions. He appreciated hearing from the individuals who will be impacted by the tough decisions, noting that mitigation measures will be included to address the concerns raised this evening. It is his job to consider all issues and concerns and ways to mitigate concerns as a council member. If the concerns cannot be mitigated, the project should be denied. He felt that staff and the applicants have put together realistic plans to mitigate concerns. By approving this project, the Council will be approving a use that will have significantly less impact on traffic than the other approved uses for this property. He stated that he test drove a car in Gilroy last weekend and that he was directed toward prescribed routes. The Council heard concerns about violations at the Chevrolet dealership, noting that the City has not received complaints or concerns about the dealership. If there are complaints or concerns, the City needs to do something about the violations. He was pleased to see the Ford representatives in attendance this evening, as he was disappointed that they were not present two weeks ago. He wanted to make sure that all employee and customer parking is to be contained on site, as he did not want to see cars parked along Condit Road. He felt that the suggestions regarding landscaping should be incorporated as recommended by Council Member Sellers. He agreed with the other comments made about the Murphy Corridor Study and how they are separate issues. He noted that the General Plan and the Murphy Corridor are 20 years out, and that it would take time to build out the area. He noted that residents were imploring the Council to change its mind. He said that he has not stated his position on this issue because he wanted to hear comments and have questions answered. For anyone to believe that Council members have already made up their minds was a wrong assumption. It was his hope that the residents believe that they have a voice in the process, and that they contacted Council members for this reason.

Council Member Tate inquired whether the application should be postponed in order to review the auto dealership strategy before finalizing the PUD in terms of making sure that it does not piecemeal the entire PUD.

Council Member Carr felt that there was merit to continuing the application and revisiting the auto dealership strategy. He said that he previously indicated that he would be willing to consider a dealership in this area, and that he did not want to see an auto row along Condit Road. The Council heard from auto dealers that they do not need to have a great massing of dealerships on large acres/spaces, and that this was not something that the Council was interested in. He said that he would not dismiss revisiting the strategy.

Council Member Sellers stated that should the City not proceed with this auto dealership, the City may end up with a use that would generate a higher volume of traffic in the area. He felt that it made sense to proceed with this application regardless of what the Council does with the bulk of the strategy.

Mayor Pro Tempore Chang felt that an appropriate location for the Ford dealership would be south of Tennant Avenue as this area has not fully developed as residential. The Tennant PUD is a large piece of property that can be planned, noting that a freeway access exists. She did not believe that placing the Ford dealership on Condit was good planning. Another good location is the property north of Cochrane Road. She stated that she would support postponing a decision on the zoning amendment and restudy of the auto dealership strategy.

Mayor Kennedy said that the Council adopted an auto dealership strategy in February 2002. The Council subsequently changed the strategy by various actions taken by the Council. The Council came up with a strategy that stipulates 3-4 auto dealerships and threw out the concept of an auto district and auto mall, although the strategy was not changed to reflect these discussions. Although the strategy may not address where the Council is today, he felt that the actions of the Council do indicate what its policy is. It was just a matter of taking those specific discussion/action that the Council has made and incorporating them into a strategy. He felt that it was a matter of changing the wording to reflect the actions that have previously been made.

Mayor Pro Tempore Chang felt that some of the Council members may have different view points of what the auto dealership strategy should be since the 19 acres have been removed from the strategy.

Council Member Sellers said that the Council has spent two years going over the auto dealership strategy and refining it. A consultant was retained and the Council reviewed all options, including Cochrane and Tennant Avenue, and concluded that the Condit site was the best site for a dealership. These two years of work still state that the auto dealership is appropriate in this PUD. The question is where the remaining 2-3 auto dealers might locate. He did not see that modification to the strategy would impact the decision on this application.

Council Member Carr agreed that the Council took a lot of time studying the strategy; and that it was the conclusion of the Council that it would only approve one dealership at this time, and that it was to be located at the Dunne/Highway 101 area. He has not decided whether Morgan Hill needs another auto dealership.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1621, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1621, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDIT – HORIZON LAND (THE FORD STORE), Amending Exhibit A, the PUD Guidelines as follows: 1) item 35 the landscaping section to include a minimum shrub height of three feet; 2) the addition of 50a, requiring landscaping and berming within the 30 foot Condit Road frontage to be designed so as to mitigate noise to be generated on site; 3) add under the “Parking and Loading Circulation” section 63a that stipulates all employee and customer parking shall be provided on site; 4) further amend the test driving requirement on 72a to stipulate that the test drive to exclude Condit Road north of Main and south of Dunne Avenue; and 5) under the general provision section, add 86 to stipulate that any flag poles installed on site shall not exceed a height of 30 feet by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: Chang; ABSTAIN: None; ABSENT: None.***

Council Member Tate stated that he was undetermined on his vote until the time he made it. He said that the discussion of his colleagues was helpful. He stated his support of the Ford dealership, but that he was not sure whether this is the right location. However, if they want to locate on Condit Road, the City will work with them.

Mayor Pro Tempore Chang excused herself from the dias.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, agreed to extend the meeting beyond the 11 p.m. curfew.*

City Manager Tewes felt that it would be appropriate for the Council to consider items 19, 20 and 21 this evening. These items relate to the recommended budget and implementation of financing strategies necessary to implement the budget. He said that item 22 is the proposal for a renovation of a piece of property in the downtown. It was his belief that the property owner is anxious to move forward with this project. Item 23 relates to a policy matter that could be postponed to a later time. Item 25 is the discussion of a policy guidance about the sequencing of development. He said that item 26 is a straight forward item.

Action: *It was the consensus of the City Council to consider agenda item 22 at this time.*

Mayor Pro Tempore/Vice-chair Chang excused herself from the remainder of the meeting.

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

22. RENOVATION OF THE ISAACSON GRANARY – Resolution Nos. 6583 and MHRA - 244

Director of Business Assistance and Housing Services Toy presented the staff report. He identified one last minute revision requested by the seller. The seller is requesting that section 9 of the purchase agreement be deleted as it was not originally agreed to by the seller or the developer. To address this issue, he handed out a redline revision to the purchase and development agreements. Staff will agree to delete section 9 in these documents and add them back into the DDA as a requirement for the developer. The clause stipulates that the developer would be responsible for any third party claims against the Agency that existed prior to the closing of escrow.

Mayor/Chairman Kennedy opened the public hearing.

Brad Jones felt that this development was very important to the downtown, as it has been a long time since a new project has gotten started. He noted that one of the main reasons for having a Redevelopment Agency was to remove blight from an area. He felt that the building is a classic poster child for blight. The removal of the blight would not take place without a lot of help from the Agency Board. He said that retail/office space is needed in the downtown, and that this project will provide some space for retail businesses to locate. He requested the Council/Agency support the request.

Leslie Miles thanked the Council for considering this loan. She indicated that this has been a four year process, and that the project is an exciting one that would involve a lot of partners (e.g., Day Worker Center, the Catholic Church, City of Morgan Hill and a local bank). She looks forward to having a successful LEED certified project and the Council's support of this project.

No further comments being offered, the public hearing was closed.

Council/Agency Member Sellers commended everyone for the work/creativity done on this project and stated his support of this unique project.

Council/Agency Member Tate stated that he was not in support of this direction in terms of economic development. However, he noted that the Council/Agency is supporting it, and that he

would also support it as the loan has been put together correctly. He would get behind the strategy and recommended that the project be done right.

Council/Agency Member Carr said that he was not in favor of this dollar amount. As the Council has approved the dollar amount, the Council will be approving how the dollar amount will be used. He felt that it has been stated that the Council/Agency is using the dollar amount in an appropriate manner. Therefore, he supports what is being requested this evening.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5683, Making Findings and Authorizing the Executive Director to Do Everything Necessary to Execute and Implement the Disposition and Development Agreement and Related Documents, Including Making any Minor Modifications to the Agreements and Executing the Purchase Agreement for Isaacson Granary, as amended by staff.*

Action: *On a motion by Agency Member Sellers and seconded by Chairman Kennedy, the Agency Board, on a 4-0 vote with Vice-chair Chang absent, **Adopted** Resolution No. MHRA-244, Making Findings and Authorizing the Executive Director to Do Everything Necessary to Execute and Implement the Disposition and Development Agreement and Related Documents, Including Making any Minor Modifications to the Agreements and Executing the Purchase Agreement for Isaacson Granary, as amended by staff.*

OTHER BUSINESS:

23. UTILITY UNDERGROUNDING FOR THE ISAACSON GRANARY

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the Council/Agency, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Chang absent, **Directed** Staff to Work with the Council Economic Development Subcommittee to Develop a Program to Assist Developments with Either the Payment of Utility Undergrounding In-lieu Fees and/or the Installation of the Utility Undergrounding.*

City Council Action

25. DISCUSSION OF PHASING FOR COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD)

Mayor Kennedy inquired whether the applicant would have any objections to continuing this item.

John Telfer indicated that he would not object to a June 25, 2003 continuance.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Continued** this item to June 25, 2003.*

19. ADJUSTMENT TO GENERAL PLAN MAINTENANCE FEE – *Resolution No. 5684*

Finance Director Dilles presented the staff report and indicated that staff has determined that it was appropriate to increase the fee to 5%. This would still maintain the perspective of recovering half the cost. Staff has determined that in reality it would take a 10% fee to generate the entire cost, following the past approach and previous Council policy as codified in a City Council policy. He read the policy into the record as follows: “The City Council recognizes the need to maintain a general plan which reflects community goals and values and is consistent with State requirements. The Council further recognizes that both the development community and city residents benefit from the current up to date general plan. As such, it is the policy of the City Council that both the development community and citizens should share in the cost of maintaining that document. A 3% surcharge on all applications filed with the Planning and Building divisions shall be instituted, thereby generating approximately half the cost necessary for general plan maintenance.” He said that it is staff’s recommendation that the Council adopt the resolution and that the Council direct staff to return to the City Council with changes in the development processing fee City Council policies to reflect the 5% surcharge.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5684.*

20. DEVELOPMENT IMPACT FEE ADJUSTMENTS – *Ordinance No. 1624, New Series and Resolution 5686*

Director of Finance Dilles presented the staff report. He stated that he has a second alternative to discuss with the Council, indicating that it is not the recommended or noticed fee schedule. Should the Council decide to go in this second direction, staff would need to return to the Council with new documents.

Council Member Tate and Mayor Kennedy indicated that they were comfortable with proceeding with the first alternative as this addresses basic public safety.

Council Member Carr indicated that it would seem that fees for the sports complex and park and recreation would be for capital costs and not operating costs. He expressed concern about this

because the Council has expressed an interest in sitting down and looking at the RDA funding again. He noted that the Council has accepted the Parks & Recreation Commission recommendation to take the \$2.7 million out of park acquisition fund and apply it toward the sports field so that the sports field monies can go to the aquatics center. Before stating that the City will be raising a fee to recuperate these costs, he felt that the Council needs to sit down and examine whether this is the way to go or determine whether there were other options. It was his belief that the Council/Agency has agreed to review the RDA funding allocation. He felt that this action may need to be the conclusion of the review session, and felt that the Council/Agency has to have this conversation.

City Manager Tewes indicated that this recommendation is consistent with the recommendation that came to the Council from the Parks and Recreation Commission, which would provide funds from the park development fund and to replace these funds with a new fee. He stated that the Council endorsed this recommendation and that, with proper notice, staff is bringing forth the recommendation.

Council Member Carr said that he would like the Council/Agency to have the discussion of whether the new fee was appropriate or whether it is time to have a conversation about extending the RDA to generate more dollars out of the RDA in order to complete projects.

Council Member Tate indicated that the Council/Agency committed the sports field as part of this idea.

Council Member Sellers stated that these are capital project dollars either way; indicating that this is a specific designation, as opposed to the general use of the RDA. He stated that he likes the fact that the recommendation is specifically identified as a specific use. He agreed that the Council/Agency needs to have this conversation. He felt that it was important to discuss the long term operational funding.

Mayor Kennedy felt that it was time to discuss the extension of the RDA. However, he did not believe that this should preclude taking action on this item. He recommended that the Council proceed with the action and then start the process of talking about the whole new visioning process. He felt that this would be a long process to make sure that it is done right, as it would require buy in from the community and take several years to be put into place.

Council Member Tate supported relooking at the strategy but felt that the City needs to make itself whole as it moves along. Unless the City replaces this funding, the City has not made itself whole on the current RDA strategy.

Council Member Carr said that in reality, the City is not whole. Even if the City was able to replace \$2.7 million, it would not be enough funding to complete everything the City wants to do.

Council Member Sellers stated that he was not convinced that the \$2.7 million was a drop in the bucket. He felt that there were a lot of options that have not been explored. He said that there are opportunities for private partnerships that have not been discussed to date, and should be discussed at the appropriate time.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Waived** the Reading in Full of Ordinance No. 1624, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1624, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.050 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES** by the following roll call vote: **AYES:** Carr, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Chang.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5686.*

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

21. PUBLIC HEARING FOR ADOPTION OF FISCAL YEAR 2003-2004 BUDGET – Resolution Nos. 5685 and MHRA-245

City Manager/Executive Director Tewes presented the staff report.

Mayor Kennedy opened the public hearing.

City Treasurer Roorda felt that there is work ahead, and that this budget produces a good base line to work from. He said that there are a lot of uncertainties that will come up in the next few months. It was his hope that there would be some resolution at the state level, and that the City may be revisiting the base-line depending on State budget implications. He stated that he was looking forward to the expertise of the City Manager and his staff as they work through the five year plan. It was his belief that the objectives were to maintain, and possibly enhance, the level of

service with possible lower revenue sources, lower expenditures and seeing some productivity improvement on the part of the City. He complemented staff on the process and getting to the base line in an efficient and effective fashion, as it is a complex process.

No further comments being offered, the public hearing was closed.

Mayor/Chairman Kennedy complimented and congratulated the finance staff and City Manager on the process and for putting the budget together.

Council/Agency Member Sellers thanked City Treasurer Roorda for his oversight of the City's finances. He thanked staff for the budget and for the five-year plan.

Council/Agency Member Carr felt that this was a responsible budget and thanked everyone for their input into it. He thanked City Treasurer Roorda for his participation as it has been helpful to have him as part of the team as the City works through the City's finances. He offered one small amendment to the budget. The amendment would be to allocate from the 20% RDA Housing Set aside \$35,000 to the Housing Trust of Santa Clara County. He indicated that the Housing Trust is trying to raise additional money that would leverage dollar for dollar monies from the State Housing Bond. He felt that the best leverage the City has received for its dollars has been from investments from the Housing Trust.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5685 Adopting the Fiscal Year 2003-2004 Annual City Budget and Adopting Appropriations Limit for Fiscal Year 2003-2004.*

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Vice-chair Chang absent, **Adopted** Resolution No. MHRA-245 Adopting Redevelopment Agency Fiscal Year 2003-2004 Annual Agency Budget, as amended (allocate 20% RDA Housing set aside of \$35,000 for the Housing Trust of Santa Clara County).*

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Carr, the Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Chang absent, **Approved** the Capital Improvement Plan.*

City Council Action

26. **RESIGNATION OF A PARKS AND RECREATION COMMISSIONER - REQUEST TO FILL VACANCY ON THE PARKS AND RECREATION COMMISSION**

Mayor Kennedy indicated that Wes Rolley has asked to resign from the Parks and Recreation Commission. He stated that when the Council interviewed candidates to fill expired terms on the Parks and Recreation Commission, Don Jensen was next in line in the Council's ranking in the process of being appointed. Rather than going through a whole new process of interviews, he recommended that Don Jensen be appointed to replace Wes Rolley.

Council Member Sellers felt that Mr. Jensen would be capable of jumping right into the Commission as he knows the City very well.

Council Member Tate stated that he was impressed by all the candidates and that he would be happy with any of the candidates as replacement. However, if Mr. Jensen was next in line, it would be appropriate to appoint him.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Accepted** Wes Rolley's Notice of Resignation from the Parks and Recreation Commission.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Confirmed** the Mayor's Appointment to the Fill Vacancy on the Parks and Recreation Commission, Term Ending April 1, 2004.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

- Discussion of the Commission appointment process (Council Member Tate)

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 12:13 a.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 12:23 a.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:24 a.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 25, 2003**

CALL TO ORDER

Chairperson/Mayor Kennedy called the special meeting to order at 6:02 P.M.

ROLL CALL ATTENDANCE

Present: Chairperson/Mayor Kennedy
 Agency/Council Members Carr, Chang, Sellers, and Tate.

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6

Agency Negotiators: Ed Tewes, City Manager; Helene L. Leichter, City Attorney; Mary Kaye Fisher, Human Resources Director

Employee Organization: AFSCME Local 101
 Morgan Hill Community Service Officers Association
 Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker
 Government Access Technician
 Maintenance Worker Assistant
 Utility Worker Assistant

Executive Management Group 1-A
 Chief of Police
 Director of Business Assistance & Housing Services
 Director of Community Development
 Director of Finance

Director of Public Works/City Engineer
Human Resources Director
Recreation and Community Services Manager
Assistant to the city Manager
Council Services and Records Manager

Middle Management Group 1-B
Police Captain
Deputy Director of Public Works
Assistant City Attorney
Assistant Director of Finance
Chief Building Official
Human Resources Supervisor
Planning Manager
Senior Civil Engineer
Budget Manager
Business Assistance and Housing Services Manager
Police Support Services Supervisor
Senior Planner
Project Manager
Utility Systems Manager
Recreation Supervisor
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C
Administrative Analyst
Secretary to the City Attorney
Accounting Technician
Human Resources Assistant

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the Closed Session items to public comment.

Mr. Bruce Tichinin, Attorney, asked to address the Council regarding an item on closed session. He stated he was representing Hedy Chang in a matter to be discussed in closed session.

City Attorney Leichter reminded Mr. Tichinin that what he was about to say would be part of the public record.

Mr. Tichinin stated that he would prefer to speak to the Council off the record on this issue, if possible.

Mr. Richard Whitmore, Attorney, stated that it would be appropriate to speak off the record only to the City Attorney, but not to the City Council.

Mr. Tichinin stated that he had already spoken with the City Attorney, and saw no reason to do so again. He stated that his comments were concluded.

No further comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor adjourned the meeting to Closed Session at 6:04 P.M.

RECONVENE

Chairperson/Mayor reconvened the meeting at 7:03 P.M.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced there were no actions taken.

SILENT INVOCATION

Chairperson/Mayor invited all to join in a silent invocation.

PLEDGE OF ALLEGIANCE

Chairperson/Mayor Kennedy extended an invitation to lead the Pledge of Allegiance to Santa Clara County Fire Department Battalion Chief Darbro.

RECOGNITIONS

Sister Cities Committee introduced Mayor Roselli from San Casciano, Italy, our Sister City.

Mayor Kennedy and City Council Members presented Joyce Maskell with a gift of a clock in recognition for her outstanding work in the completion of the Community Playhouse Project.

CITY COUNCIL SUB-COMMITTEE REPORT

None.

CITY MANAGER REPORT

City Manager Tewes reported the testing regimen for domestic water wells for perchlorate is continuing, and he is pleased to report all city wells have again tested non detect this month.

He also reported that the State has still not adopted a budget. State senate voted on a proposal, but it failed because of lack of enough votes. He has started to see numbers proposed in bills being voted on. The amount of \$1.2 billion is being proposed to be cut from cities; and our share of that amount would be nearly 500K from next fiscal year. He stated that it is important to stay vigilant and watchful and remind the legislature about reductions in local services that would result from such a funding reduction.

CITY ATTORNEY REPORT

City Attorney Leichter made no report.

OTHER REPORTS

None were presented.

PUBLIC COMMENT

Mayor Kennedy opened the floor to comment on items not on the agenda.

Mr. John Amos, a Volunteer in Fire Prevention (VIP) with California Department of Forestry, working out of the CDF facility on South Monterey Road, invited the Council and the public to visit the facility this weekend. They will be having a Field Day activity to test their amateur radio community's equipment for a twenty-four hour period beginning at 11:00 a.m. on Saturday until 11:00 a.m. on Sunday. This exercise is intended to ensure that all the equipment will operate effectively in the event of a major emergency. He also invited the Council to a small barbeque to be held at 6:00 p.m. on Saturday evening.

Mr. Dan Craig, of the Morgan Hill Downtown Association asked to speak on two items. There will be an Annual meeting and reception tomorrow night at the Community and Cultural Center at 6:00 p.m., and he invited the Council and public to come to the meeting. The second item he addressed is the current residential conversion ordinance as part of downtown plan implementation. He is particularly concerned about the yellow house on Monterey Road where Penny's Pretties was previously located. This recent change of use has triggered some requirements that are onerous for the tenant applying to occupy the building. He stated he is aware that City staff are working on this and wanted to weigh in on it and encourage the Council and staff to explore ways to resolve this issue in a timely manner so that a commercial tenant can be placed in this building.

Mr. Jerry Di Salvo also spoke regarding this yellow house located in the downtown area. He is the owner, and has tried to entice a new tenant, but those that are interested found that the use had never been changed from residential to business, even though there was a business use there for over five years. The cost of converting the building to meeting code requirements for handicapped access would be a hardship on the business. He could keep it residential, but this would not be a good use in this location. His favorite solution would be to have the Council override the use change. Staff cannot do this without the assistance of the Council. He is concerned about the hardship of conversion of the building to meet the code requirements for a business use. Building Inspector Ken de Luna had suggested going for a historical status, which would allow less onerous handicap requirements, but he would have to find an applicant that would allow for this type of designation. This would also restrict him in the future from expanding his building. He requested that the B use be allowed to continue.

Santa Clara County Fire Battalion Chief Darbro addressed this issue based on the current fire codes. He stated that staffing of fire department is at a minimum, and to dilute the fire codes currently on the books

would cause the residential safety level to drop. Putting a business in that building would increase the level of fire hazard. He encouraged the Council to enforce the current code to maintain public safety for the benefit of public.

Council Member Tate commented that the Economic Development Subcommittee is already meeting on this issue and he wanted to let the speakers know that this is under consideration. They will report back to the Council when they have completed their study of the issue.

Redevelopment Agency Action

Action: *On a motion by Agency Member Tate, and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 1, as follows:*

1. **MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) AGREEMENT**

Action: ***Authorized** the Executive Director to Negotiate and Execute an Agreement with the Morgan Hill Downtown Association (MHDA) in an Amount Not to Exceed \$80,000, Subject to Agency General Counsel Approval.*

City Council Action

CONSENT CALENDAR:

Council Member Sellers requested that Item 5 be pulled for comment.

Council Member Tate requested that Items 13 and 15 be pulled for a separate vote.

Council member Carr requested that Item 14 be pulled for comment.

Action: *On a motion by Council Member and seconded by Council Member, the City Council unanimously (5-0) **Approved** Consent Calendar Item 2 -4 and 6-12, as follows:*

2. **MAY 2003 FINANCE AND INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

3. **AWARD CONTRACT TO PROVIDE PUBLIC WORKS PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**

Action: *1) **Approved** a Professional Contract with Harris and Associates, Inc. to Provide Land Development Plan Checking Services on an As-Needed Basis at a Cost Not-to-Exceed of \$100,000 for Fiscal Year 2003-2004; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.*

4. **AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-**

NEEDED BASIS

Action: 1) **Approved** a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-Needed Basis at a Cost Not to Exceed \$127,000 for Fiscal Year 2003-2004; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval from the City Attorney.

5. COMMUNITY INDOOR RECREATION CENTER APPROVAL OF SUBCOMMITTEE APPOINTMENTS

Council Member Sellers commented that there has been concern that there is not a broad committee involvement on the IRC. He stated that the Council has made the decision to have one committee involved in the IRC, but this one committee will include representatives from other committees. He stated that everyone involved will need to be prepared to work, because they will be the only committee and there will be much to do over the next few months.

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Subcommittee Appointments.

6. APPROVE LEASE FOR WOODLAND ESTATES

Action: 1) **Approved** Lease Agreement; and 2) **Authorized** the City Manager to Execute the Lease of City-owned Open Space Adjacent to Llagas Creek with Woodland Estates for the Fee of \$1.00 Per Year.

7. AWARD OF CONTRACT FOR 2002-2003 PAVEMENT RESURFACING PROJECT

Action: 1.) **Awarded** Contract to O'Grady Paving, Inc. in the Amount of \$788,982 for Construction of the 2002-2003 Street Resurfacing and Reconstruction Project; and 2) **Authorized** a \$78,898 (10%) Construction Contingency.

8. COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT

Action: **Directed** Staff to Execute the Agreement with the County.

9. PUBLIC WORKS MAINTENANCE AGREEMENTS FOR FISCAL YEAR 2003-2004

Action: Contingent upon Approval of the Fiscal Year 2003-2004 Budget:

1. **Approved** New Maintenance Agreements for
 - a) Emergency Pump Maintenance and Repair for Booster Stations
 - b) Generator Maintenance Services; and
 - c) Emergency Repairs, Maintenance, and Parts for Well Sites;
2. **Approved** One Year Extensions to Agreements for
 - a) Laboratory Services for Potable Water Sampling and Analysis
 - b) Landscape Maintenance Services; and
 - c) Annual Tree Pruning and Removal;
3. **Authorized** the City Manager to Execute the Agreements/Extensions on Behalf of the City, Subject to Review and Approval of City Attorney.

10. **APPROVAL OF PROFESSIONAL SERVICES CONTRACT FOR SEWER TRUNK SURVEYING**

Action: ***Authorized** the City Manager to Execute a Contract in the Amount of \$38,000 with Bagoye & King Surveying for a Preliminary Survey of the Proposed Sewer Trunk Alignment, Subject to Review and Approval by the City Attorney.*

11. **APPROVAL OF CONTRACT/FUNDING FOR CONTRACT TEMPORARY ENGINEERING SERVICES**

Action: ***Approved** the Contract and Funding for Two Temporary Full-time, and One Part-time Contract Engineers.*

12. **ACCEPTANCE OF STATE HIGHWAY 101 AT TENNANT AVENUE NORTHBOUND RAMPS SIGNAL PROJECT**

Action: *1) **Accepted** as Complete the State Highway 101 at Tennant Avenue Northbound Ramps Project in the Final Amount of \$206,152; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

13. **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 12, 2003**

Mayor Kennedy requested the following correction to these minutes: to change the time the meeting was called to order from 9:30 p.m. to 9:30 a.m.

Council Member Sellers requested the correction of the final sentence of the final paragraph from "Council Member Carr continued" to "Council Member Sellers continued".

Action: *On a motion by Council Member Sellers, and seconded by Council Member Chang, the City Council voted 3-0-2, with Carr and Tate abstaining, to **Approve** the Minutes of June 12, 2003, as amended.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

14. **MORGAN HILL COURTHOUSE ENVIRONMENTAL IMPACT REPORT**

Council Member Carr asked a representative of Santa Clara County who was present if the article he had read in the Mercury News stating that the County was restructuring its courts would have an impact on the future Morgan Hill Courthouse; in particular, the programming that would go on in the courthouse.

Council Member Sellers also asked for information on the any structural changes and usage changes that are planned, such as the number of judges and facility usage.

The County representative responded that he could not provide an answer, but that he would take the questions back to the County and respond to the Council's questions.

City Manager noted that the Council has been provided with a revised version of Resolution No. 5687, which has a change on page 4, paragraph H, dealing with impact fees. The County did not respond to the comment on these fees, and he is aware that the County Counsel is conducting an evaluation of whether or not the County might be exempt from impact fees. In certifying the EIR the City wants to make clear in the new Section H the City is reserving the right to charge impact fees, if applicable.

Action: *On a motion by Agency/Council Member Sellers, and seconded by Agency/Council Member Chang, the Agency Board /Council unanimously (5-0) **Adopted** the revised version of Resolution No. 5687, Considering the Environmental Impact Report, Making Required CEQA Findings, and Adopting a Mitigation Monitoring and Reporting Program for the Morgan Hill Courthouse Project.*

15. APPROVED JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 11, 2003

Action: *On a motion by Agency/Council Member Sellers, and seconded by Agency/Council Member Chang, the Agency Board /Council unanimously (4-0-1, with Tate abstaining) **Approved** Consent Calendar Item 15.*

City Council Action

OTHER BUSINESS:

16. DISCUSSION OF PHASING FOR COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD) (Continued from June 18, 2003)

Director of Community Development Bischoff presented the staff report.

City staff has not been able to reach an agreement with the developers on how to develop the property within the current constraints of the general plan. There is no action before the Council this evening in regard to this specific project. Council is only being asked to make a decision on a policy matter at this time to provide direction to staff on how to implement the policy language as to what constitutes a "larger development" under Land Use Policy 10C of the General Plan, Action 10.5.

Mayor Kennedy opened the public comment.

Mr. John Telfer addressed the Council and stated that he had asked for PUD approval in advance of development of the property so he knows what can be done on a site and what the City wants to see on the property when he goes out to market these groups of properties. Stated that the owner of the middle

section of 4.5 acres has always had plans to develop his property with a service station and now has Wienerschnitzel interested in possibly adding on to that in the back. He stated that Dr. Biedermann, who owns the approximately 14 acre parcel, is proposing a 10,000 square foot medical office building.

He plans to go through the PUD process, but would like to develop these two parcels as a first phase of the PUD development. If they are not going to be able to do that, then he will not start the PUD process. He needs some direction from the Council on whether this phased development will be possible. He asked the Council to look at their policies on this issue. He asked them to define what the term “repetitive uses” means, because there does not seem to be this problem on Tennant Avenue or in this quadrant of the city.

The other issue he requested them to consider is the need for this to be part of a larger development. He feels that there should be a master plan in place for this entire 29 acre parcel, and this is what he is trying to accomplish. The question is more about whether it can be done in phases as they are requesting. He feels that it would help the potential for the development of the balance of this property to allow the phased development of these two projects. The most important reason that Dr. Biedermann does not want to go forward without the service station, is that there is a substantial amount of the infrastructure that the service station developer has agreed to install, which will be of great benefit to Dr. Biedermann’s property. He also believes that this benefits the future development of the PUD and will help attract additional uses.

Mr. Telfer requested that the Council provide some direction on the phasing issue, so he can know whether he should go forward with the PUD process.

Mr. Bruce Haller spoke as the representative from Wienerschnitzel, and as a resident of Morgan Hill. He stated that he understands the development issues of Morgan Hill, since he lives here. His company knew they did not want to be on Dunne Avenue or Cochrane, and they decided that Tennant Avenue would be a good location, and felt that it would also help to alleviate some of the traffic on Dunne Avenue. He stated that when they started working on the project 4 years ago there was no gas station in the area either. He feels that these uses are suited to Tennant Avenue. When they started the PUD process with their project they felt the process was vague. He sees other PUD developments around town that are not fully developed. He would love to be in town, but needs the traffic from the freeway to make the business a success. He is hoping for an explanation from the Council on what they are going to be able to do, and feels that Wienerschnitzel would be an asset to the community.

No further comments being offered, the public comment was closed.

Council Member Sellers stated that we have talked about this issue in the past. The difference this time is that the Council just went through a discussion of PUD developments and what is appropriate. He keeps getting stuck on the definition of a larger development and feels that it needs to be more definitive than it currently is. If, as we have indicated through staff, it makes sense to put in the medical services building by itself, than it must be that it constitutes a larger development; and if that is the case, then we should allow the other uses at the same time. The other issue that bears discussion is whether there is a need for this service or product. He stated that medical services are a significant need, that there is an

effort underway to attract medical services to the community, and this is an opportunity to attract medical services. Because this could easily be termed a larger commercial use, and this medical use is one we desire, he feels it would make sense to proceed on this. Developing that initial use will help with the development of the PUD, and he thinks the development of the infrastructure and the initial commercial use will facilitate the development of the remainder of the PUD, so he feels the Council should support this.

Mayor Kennedy concurred, and agreed with the benefit of shifting traffic from Dunne to Tennant. He asked the City Manager if this is a possible location for an auto dealership.

City Manager Tewes responded yes, but the challenge would be that it would be within the 10 mile radius of the dealerships in Gilroy, which would limit the dealerships that could locate at this site. He also noted that the Council will discuss this issue at their workshop on auto dealerships to be held next week.

Council Member Tate stated that each time this issue is raised, he has the same concern that there are only a limited number of corners near the freeway; and because they are rare and precious commodities, the Council placed the PUD requirement on them. The question is, do we want to put ancillary uses on these properties and then make a larger tenant have to fit to the ancillary uses, or do we want to get the major tenant in first and have the ancillary uses fit to them. He is not sure the 10,000 square foot medical building is the best major use of this piece of property. He does not want a major use that comes later to have to fit itself to these smaller uses.

Council Member Carr stated that he agrees, and feels that this would be a good goal if the economy was booming and a lot of people were knocking on the door to develop. But the reality is that we are not in a booming economy, and how long are we willing to hold out for an anchor tenant to help with the infrastructure. If we are going to develop, he feels that we need to lay the ground work now.

Council Member Sellers stated that he concurs, but comes to it in a different way. He asked if Council Member Tate's concern was that the piecemeal approach would preclude a major tenant being interested later on.

Council Member Tate responded yes.

Council Member Sellers stated that since this is a 14 acre parcel, he feels that the Council could proceed, with the eventual goal of having a major tenant.

Council Member Chang returned to the question of whether this piece of land could be one that would come under consideration for an auto dealership at the workshop next week, and Mayor Kennedy responded that this would be something for discussion at that time. She stated she was concerned that if it is a possible candidate for dealership use, this decision should wait until after the workshop to discuss this issue because if you plan for an auto dealership it might be laid out differently.

Council Member Sellers recalled from a previous discussion that these uses would not preclude any

option, because these two uses will be set up so that a larger use could built around them; and no matter how it was laid out these types of uses would be what would ultimately be placed in this PUD anyway.

Council Member Tate stated that if he believed that assumption, he would support it, but he does not believe that assumption.

Mayor Kennedy stated that he understands and shares concerns raised about jeopardizing a future use that would be better and more appropriate for this PUD. But we have waited a long time and he now feels more like Council Member Carr that perhaps we need to do something to get this moving forward.

Council Member Chang asked if we do this tonight would that preclude putting a dealership there.

Director of Community Development Bischoff responded that no, it would not preclude an auto dealership being placed here. If the Council gave the green light tonight, the infrastructure that would be installed would leave the site open to future development.

Mr. Telfer added the comment that he feels that the Council would have the opportunity to discuss this when the PUD actually comes before them for approval. At that time they would be able to see the locations of infrastructure and construction

Mr. Bischoff stated that the PUD still has not been adopted, and the Council will have the final approval of what is submitted, and the opportunity at that time to make sure the options for larger tenants is protected.

Council Member Sellers moved that the interpretation of Action 10.5 be modified to allow for the type of uses detailed, with the understanding that the projects still will have to go through the entire PUD process.

Council Member Carr seconded the motion, but asked to hear the comments of the City Manager.

City Manager Tewes stated he was offering help with the wording of the motion. He stated he wanted to make sure that the Council understood that they were not amending anything with their motion, but were only adopting a policy for staff and applicants regarding what constitutes the larger development required by the General Plan. It appears that the larger development proposed this evening, such as the 10,000 square foot medical office building, would be appropriate for that first phase; and the Council has indicated, in accordance with what is already the process, that they would be reviewing the PUD for its impact on future development opportunities.

Carr stated that we should also make it clear that this reinterpretation the Council is asking of staff is on a trial basis; and that we should review this reinterpretation to see if it makes sense after it has been applied once or twice to see if it makes sense and that this was the correct decision.

Council Member Sellers agreed that his motion should be amended to the language of the City Manager's suggestion.

Council Member Tate commented on Council Member's Carr statement that they would come back and after a trial, because there won't be parcels left to correct the process with at a later date.

Council Member Carr does not think that is the case, and though he wants to live by it and protect it, the General plan has to be a living document and is not set in stone.

Council Member Sellers stated that the opportunity to correct any problems with this project would occur during the review of the PUD when it comes back to the Council for review and approval at a later date.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council approved (3-2, with Chang and Tate voting No) the following: **Directed** Staff to apply a reinterpretation of what constitutes a "larger development" as required by the General Plan for the first phase of development; subject to review and approval of Council during the PUD approval process.*

17. APPROVAL OF TRUNK SEWER FUNDING IN GILROY AT NEW TARGET DEVELOPMENT

Director of Public Works Ashcraft presented the staff report. He noted that since the staff report was provided to the Council the request has been increased to \$420, 000 to cover additional expenses for engineering, surveying, and a 4% contingency. Because this trunk line is in the parking lot of the Target development, an immediate decision about our participation needs to be made. If not done soon it would cost more to do it later after the lot has been paved over.

Mayor Kennedy opened the public comment.

No comments being offered, public comment was closed.

The Council expressed concern about the suddenness of this request, and the reason for it coinciding with the development of the Target project.

Mr. Ashcraft was able to explain to them that the problem with this line is that the grade is not steep enough to allow full capacity of sewage flow, so the line has to be re-laid to the proper specifications. This was not discovered until the Target project was begun, and the consultant for Gilroy's Sewer Master Plan did an on-site check of the sewer line. Previously, there was no reason to suspect a problem because the master plan shows the capacity and grade as being adequate, but when there was an on-site check, it was discovered that the pipe is laid on too flat of a grade, so it does not handle the capacity that the master plan reflected. He explained that we are fortunate to have discovered this issue now, as it will cost us much less to fix it now than it would when it would have been inevitably discovered at a later date.

City Manager Tewes noted that the staff is not recommending approval of any agreements at this time,

but only the funding of this particular stretch of pipe replacement.

Council Member Sellers stated that given all the information, we should proceed with this expenditure of \$420,000, but that the issue of our fair share is an issue that must be dealt with in discussions. He requested that the City Manager follow up on the issue of our fair share of costs. He made the motion that the \$420,000 expenditure be approved.

His motion was seconded by Council Member Carr. He made the comment that he does not want our capacity negotiated to a lower amount.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** a Maximum Expenditure of \$420,000 from Unappropriated Sewer Impact Fee Fund Balance for this Co-op Project with the City of Gilroy and **Approved** the Concept of a Cost Sharing Agreement and **Authorized** the City Manager to Execute, with Particular Attention to the Issue of Fair Share of Costs, Subject to Review and Approval by City Attorney.*

Redevelopment Agency and City Council Action

OTHER BUSINESS:

18. UTILITY UNDERGROUNDING FOR THE ISAACSON GRANARY (Continued from June 18, 2003)

Director of Business Assistance and Housing Toy presented the staff report, recommending that this issue be referred to the Council Economic Development Subcommittee for further consideration.

Mayor Kennedy opened the public comment.

No comments being offered, public comment was closed.

Council Member Sellers expressed his concern about exempting specific areas from undergrounding. He feels that there needs to be a longer term approach and some opportunities for relief. He does not want to exempt a few projects now and end up in the future with no resources to proceed with the undergrounding.

Action: *On a motion by Agency/Council Member Chang, and seconded by Agency/Council Member Sellers, the Agency Board /Council unanimously (5-0) **Directed** Staff to Work with the Council Economic Development Subcommittee to Develop a Program to Assist Developments with Either the Payment of Utility Undergrounding In-Lieu Fees and/or the Installation of the Utility Undergrounding.*

RECONVENE TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 8:54 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 10:13 p.m.

CLOSED SESSION ANNOUNCEMENT

There were no reportable actions.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 10:15 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE DEPUTY CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES - 57 EAST SECOND STREET

RECOMMENDED ACTIONS:

1. Open and close Hearing.
2. Grant exemption to the requirement to underground utilities with payment of in lieu fees for the proposed development at 57 East Second Street.

Agenda Item # 15

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: A single-family residential dwelling addition at 57 East Second Street was conditioned to underground the overhead utility lines along East Second Street. The development has only 60 linear feet of frontage along East Second Street. Pursuant to City Code Section 12.02.110 (attached), the developer is requesting exemption from the requirement to underground the overhead utility wires and request to pay an in-lieu fee instead. Staff supports this request on the basis that the installation of these improvements on such a small scale would not be cost effective and could be installed more efficiently as a portion of a larger installation of improvements at a later date.

FISCAL IMPACT: In-lieu fees totaling \$6,000 will be placed in the Undergrounding Fund #350-37648 if this exemption is approved.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

MEASURE P APPEAL APPLICATION AP-03-01: E. DUNNE - DEMPSEY

RECOMMENDED ACTION(S):

Open/Continue the public hearing to July 16, 2003.

EXECUTIVE SUMMARY:

This item was considered by the City Council at the May 28, 2003 meeting and was referred back to the Planning Commission for a recommendation on the merits of the appeal. The applicant, Janet Dempsey, is appealing the Planning Commission's project evaluation under Part 2 of the Residential Development Control System (Measure P) scoring criteria.

The Planning Commission considered the appeal application at their June 10 meeting. The Commission's recommendations were scheduled to be considered by the City Council at the July 2, 2003 meeting. However, due to an error in the public notice mailing, staff will need to advertise this item again for public hearing. It is therefore recommended the application be opened for public hearing and then continued to the July 16, 2003 City Council meeting.

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 16

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

MEASURE P APPEAL APPLICATION AP-03-02: BARRETT - ODISHOO

RECOMMENDED ACTION(S):

Open/Continue the public hearing to July 16, 2003.

EXECUTIVE SUMMARY:

This item was considered by the City Council at the May 28, 2003 meeting and was referred back to the Planning Commission for a recommendation on the merits of the appeal. The applicant, Pennoel Odishoo, is appealing the Planning Commission's project evaluation under Part 2 of the Residential Development Control System (Measure P) scoring criteria.

The Planning Commission considered the appeal application at their June 10 meeting. The Commission's recommendations were scheduled to be considered by the City Council at the July 2, 2003 meeting. However, due to an error in the public notice mailing, staff will need to advertise this item again for public hearing. It is therefore recommended the application be opened for public hearing and then continued to the July 16, 2003 City Council meeting.

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 17

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 2, 2003

MEASURE P APPEAL APPLICATION AP-03-03: W.

EDMUNDSON – PINN BROS.

RECOMMENDED ACTION(S):

Open/Continue the public hearing to July 16, 2003.

EXECUTIVE SUMMARY:

This item was considered by the City Council at the May 28, 2003 meeting and was referred back to the Planning Commission for a recommendation on the merits of the appeal. The applicant, Robert Peterson, representing Pinn Bros. Construction Inc., is appealing the Planning Commission's project evaluation under Part 2 of the Residential Development Control System (Measure P) scoring criteria.

The Planning Commission considered the appeal application at their June 10 meeting. The Commission's recommendations were scheduled to be considered by the City Council at the July 2, 2003 meeting. However, due to an error in the public notice mailing, staff will need to advertise this item again for public hearing. It is therefore recommended the application be opened for public hearing and then continued to the July 16, 2003 City Council meeting.

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 18

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager



REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: *July 2, 2003*

Request for Proposals for the Police Facility

RECOMMENDED ACTIONS:

Provide comments and direct staff to issue a Request for Proposal (RFP) for the current police facility located at 17605 Monterey Road.

EXECUTIVE SUMMARY:

In May 2003, the Redevelopment Agency issued a request for Statements of Interest (SOI) from parties desiring to acquire or lease the police station property. The intent of the SOI was to allow interested parties to present conceptual proposals without incurring the expense normally associated with the more formal and detailed Request for Proposal (RFP) process. We have received three responses to the SOI: a) El Toro Brewing Company, b) Page Holdings, LLC, and c) Forst/Pappas. Attached are the three proposals for your reference. El Toro and Page are proposing restaurant/brewpub concepts and Forst is proposing a restaurant only.

The Council Economic Development Subcommittee (EDS) and staff have reviewed the proposals and recommends that we invite all three proposals to participate in a Request for Proposals process. When the SOI was approved by the Agency, we indicated we would return to the Agency with a short list of the best responses and then request authority to issue an RFP to those short-listed proposals.

A RFP process provides the best mechanism by which to evaluate competing proposals because it provides for a more objective selection process. The RFP process will require each proposer to provide us with more detailed information regarding their concepts. This information would include, but is not limited to, development pro formas, operating pro formas, information needed to evaluate financial capacity to perform, business plan, conceptual plans for the facility, level of assistance needed from the Agency, and timeline for development. Proposals could then be evaluated and compared and one selected based on which is most beneficial to the Agency/City. Staff will consult with the EDS in the preparation of the RFP.

Proposers will be responsible for their cost in preparing a response to the RFP. However, in an effort to offset costs to the proposers, the ED Subcommittee and staff are recommending that we offer technical assistance to the three proposers. This technical assistance could be in the form of structural reports for the facility or assistance in preparing the financial data requested by the RFP. To make the technical assistance more useful, we plan to meet with the three proposers, as a group, prior to the issuance of the RFP. At the meeting, we would ask the proposers what type of technical assistance would be helpful to them in the preparation of their responses to the RFP. The technical assistance would not exceed a total of \$20,000 and no funds would be used to reimburse proposers for their expenses. We anticipate that the proposals to the RFP would be due in August. During the RFP submittal period, staff will work with the EDS establish the selection process.

FISCAL IMPACT: Up to \$20,000 for the technical assistance services.

Agenda Item # 19

Approved By:

BAHS Director

Submitted By:

Executive Director